

January 15, 2008



**TRANSCRIPT
January 15, 2008**

MONTGOMERY COUNTY COUNCIL

PRESENT

Councilmember Michael Knapp, President	Councilmember Phil Andrews, Vice President
Councilmember Roger Berliner	Councilmember Marc Elrich
Councilmember Valerie Ervin	Councilmember Nancy Floreen
Councilmember George Leventhal	Councilmember Marilyn Praisner
Councilmember Duchy Trachtenberg	



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1 President Knapp,

2 Good morning, everybody. Welcome back. The Council is reconvening after a month of
3 recess. I particularly want to welcome Councilmember Praisner back. It is a pleasure to
4 have her back and in such good spirits and in such good health. We begin the morning
5 with invocation by Reverend Leslie Klingensmith, Saint Matthew Presbyterian Church in
6 Silver Spring. Please come join us. All rise.

7
8 Reverend Leslie Klingensmith,

9 Let us pray. Loving and holy God, we give you thanks this morning for this marvelous
10 country that we live in and for this beautiful state and this wonderful county. We pray
11 that your wisdom might be poured out on all who lead us, that we would take seriously
12 the commands of the biblical prophets to bring forth justice, to open the eyes of the
13 blind, to feed the hungry, and to set the prisoners free. We ask that we remain faithful to
14 you in your teachings in all that we say and do, and that your spirit might be present
15 among these deliberations today so that our Council can make decisions that reflect the
16 love that you have for the world and that move us closer to your vision of a just society.
17 We pray all of this in the name of the God who created us and loves us all. Amen.

18
19 President Knapp,

20 Amen. Thank you very much. We now turn to Councilmember Ervin for a presentation.
21 A proclamation in recognition of the M-NCBIA, the Home Builders Care Foundation, Inc,
22 and the HOC for their efforts to help to provide a permanent, affordable and supportive
23 housing for single, disabled adults.

24
25 Councilmember Ervin,

26 Good morning, everyone. I am so excited and very proud to be able to present this
27 proclamation today. On December 20, a very exciting event happened in my
28 neighborhood in Silver Spring when we were able to come together as a community, to
29 welcome some new neighbors to the neighborhood. And I'd like to ask some folks to
30 come down right now to join me, and they are Mike Conley, Pattie Kane, Raquel
31 Montenegro, Sally Roman and Sharon London. It was a very inspiring event at 527 that
32 day, and it was one of those moments when I found myself very proud to be a member
33 of this Council. And at this time I'd also like to bring up Councilmember George
34 Leventhal because it was the work of the previous Council that made 527 Dale Drive a
35 reality. And you must come up too, Tedi Osias, if you would please. This is a story
36 about partnership and what it means to be partners in our community to make sure all
37 those folks who live in our community have access to housing. And so in that spirit, in
38 my community, we have a saying, to whom much is given much is required. And it is in
39 that spirit that I am going to read this proclamation, and I'd like George Leventhal to step
40 up here with me, because I worked for George Leventhal as his chief of staff, and I
41 know George's commitment to the issues of affordable housing and homelessness in
42 our County. So we're going to share this moment together because it was the work of
43 the last Council that really made 527 Dale Drive a reality. Excuse me. Whereas -- we
44 can share this too, George -- the Home Builders Care Foundation is the 501 C3



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1 charitable affiliate organization of the Maryland National Capital Building Industry
2 Association.

3
4 Councilmember Leventhal,

5 And whereas the mission of the Home Builders Care Foundation is to complete
6 construction projects with particular focus on shelter-related projects by using the
7 industry's specialized building construction skills and by seeking to work collaboratively
8 with existing community service providers such as other non-profit and government
9 agencies serving the homeless and other at-risk populations.

10
11 Councilmember Ervin,

12 And whereas the Housing Opportunities Commission is Montgomery County's housing
13 authority providing affordable housing and supportive services for low- and moderate-
14 income families and individuals throughout the County.

15
16 Councilmember Leventhal,

17 And whereas Home Builders Care Foundation provided in-kind donations of labor and
18 materials to help rehabilitate 527 Dale Drive, an apartment building owned by the
19 Housing Opportunities Commission in Silver Spring that provides affordable housing
20 and supportive services for homeless and disabled adults.

21
22 Councilmember Ervin,

23 And whereas Home Builders Care Foundation contributed unit finishes including kitchen
24 cabinets, appliances, interior wood trim and doors, flooring and painting, bathroom
25 accessories and blinds.

26
27 Councilmember Leventhal,

28 And whereas Mike Conley, President of Home Builders Care Foundation, and Ted
29 Smart -- he's not here -- the Home Builders Care Foundation Builder Captain for the 527
30 Dale Drive renovation, and the Board of Directors Foundation, and the Housing
31 Opportunities Commission are generous and valuable partners with Montgomery
32 County as it meets the challenge of providing affordable housing and supportive
33 services for homeless families and individuals in Montgomery County.

34
35 Councilmember Ervin,

36 Now therefore be it resolved that the County Council of Montgomery County, Maryland,
37 hereby commends the Maryland National Capital Building Association Home Builders
38 Care Foundation, Inc. and the Housing Opportunities Commission for all of their efforts
39 to help to provide permanent, affordable, supportive housing for single, disabled adults
40 who are homeless; presented on this 15th day of January in the year 2008; signed by
41 Council President, Michael J. Knapp. And I would like to ask all of you to come up and
42 make a couple comments if you would.

43
44 Mike Conley,



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1 Good morning, Mike Conley. When Elizabeth Davidson approached us two years ago to
2 assist in this project, it took us very little time to accept the invitation. In fact, because it
3 was so aligned with our mission and so necessary a project for Montgomery County, it
4 will not be the last project. It was not the first project that we have worked on
5 collaboratively in partnership with Montgomery County bringing building industry and the
6 County officials and government together to fight this very, very necessary effort to
7 address the homelessness needs in Montgomery County. We look forward to another
8 project. We're already signed up for to work on the Gude Drive addition to the men's
9 shelter. Thank you very much.

10
11 Councilmember Ervin,
12 Thank you, Mike. I'll present this to you as soon as everybody is done.

13
14 Sally Roman,
15 I'm Sally Roman, HOC Commissioner, and I'm just delighted to be here, really on behalf
16 of others. So many people were involved in this, starting with the PLQ Team. It's really
17 been a public, private, non-profit partnership with the neighborhood as well. And it's just,
18 I think, a small step but a very important step in helping a very needy and deserving
19 population. So I'm delighted to be here.

20
21 Councilmember Ervin,
22 Thank you, Sally.

23
24 Sharon London, 16
25 Hi. I'm Sharon London with Montgomery County Coalition for the Homeless. And like
26 Sally, I'd like to just thank the partners in this program. It really was a group effort. The
27 PLQ Team that Sally mentioned includes not only the Montgomery County Coalition for
28 the Homeless, the Housing Opportunities Commission, but it's the Department of
29 Housing and Community Affairs, our funders and Department of Health and Human
30 Services who provide a lot of the support for these programs. Most importantly, I'd like
31 to thank Home Builders Care. We were privileged to work with them for the
32 development of the original Gude Drive men's shelter. We are excited to work with them
33 on the expansion of that shelter, and we are delighted to partner with him on Dale Drive.
34 Thank you.

35
36 Raquel Montenegro,
37 Thank you, Councilmembers. Raquel Montenegro, the Building Industry Association.
38 And I'd like to thank the Council for the recognition. This is a classic example of a public
39 private partnership. We were delighted as a building industry to be able to do something
40 that would bring positive comment as to our contribution to the community. Thank you.
41 We look toward to other joint ventures.

42
43 Tedi Osias,



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1 I'm Tedi Osias with the Housing Opportunity Commission. I couldn't possibly add to
2 what's already been said. Thank you to the Council of its recognition.

3
4 Councilmember Ervin,
5 All right now, who gets them? Thank you all for coming.

6
7 President Knapp,
8 Thank you very much. It is now my pleasure to finish out some business from last year.
9 And I would like to ask former Council President Marilyn Praisner to come join me up
10 front. As most who watch the Council know, it is the tradition at the election of new
11 officers to present the outgoing President with the traditional gavel. As you all also are
12 aware, early in November we received a phone call that our dear President was in a car
13 accident and was in the hospital and not in great condition. And she has made
14 tremendous improvement and is back with us. And we told her husband Don and her
15 daughter Allison that we weren't going to give them the gavel when they were here in
16 December giving remarks on her behalf because we're going to hold it to make sure that
17 she came back. So I am pleased that now, as we have reconvened for the new year, to
18 be able to present this gavel to Marilyn J. Praisner, President of the Montgomery
19 Council 2006-2007, and to thank her for her efforts in leading the new Council and
20 getting us off to the right foot with a new County Executive, but more importantly, just to
21 thank you for coming back and welcoming you back and getting well.

22
23 Councilmember Praisner,
24 Thank you so much. Thank you for the recognition and the thanks. It was my pleasure
25 to serve as Council President -- the first Council President for this Council. I thoroughly
26 enjoy working with my colleagues here and with that colleague across the street, Ike
27 Leggett. It's a pleasure. I want to take this opportunity to first to thank my daughter
28 Allison for volunteering to deliver my end-of-the-year comments as Council President.
29 She did a terrific job. I watched it on rerun and even have a copy of the tape, so I can
30 save it and give it to her children to remember as well. I also want to take this
31 opportunity to thank the hundreds and hundreds of individuals who sent cards, called,
32 flowers, fruit baskets, books, a whole host of get-well messages that came from within
33 Montgomery County, from within the state of Maryland and from across this country
34 from friends and colleagues that I've gotten to know over this 17-plus years. I am
35 overwhelmed by your affection and support and well wishes, and it helped a great deal
36 in getting me back here, in addition to wanting to get my plaque. Thank you all very
37 much.

38
39 President Knapp,
40 Now to general Council business. Announcements, agenda and calendar changes,
41 Madam Clerk.

42
43 Council Clerk,



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1 We have no changes to announce; however, we did receive a couple petitions we'll
2 want to announce. One was from residents concerning investment of County employee
3 pension funds in the Sedan, and petition from students supporting funding for the Kids
4 Ride Free Program. Thank you.

5
6 President Knapp,
7 Thank you very much. Action before us; approval of the minutes, Madam Clerk?

8
9 Council Clerk,
10 Yes, the minutes of December 4, 2007.

11
12 President Knapp,
13 Is there a motion?

14
15 Councilmember Floreen,
16 Move approval.

17
18 President Knapp,
19 Is there a second? Moved and seconded. All in favor? Any opposed? It is unanimous.
20 There is some poetry and symmetry there. Moving to the consent calendar. Is there a
21 motion?

22 Councilmember Andrews
23 [Inaudible].

24
25 President Knapp,
26 Second?

27
28 Councilmember Ervin,
29 Second.

30
31 President Knapp,
32 Moved and seconded. Are there any comments? Mrs. Praisner.

33
34 Councilmember Praisner,
35 Yes, I wanted to comment on Item 2A, the Franchise Agreement with Cavalier. I saw
36 staff here for the committee discussion. Two issues: one, the relationship between
37 Cavalier and Verizon is significant in the delivery of service. Yet, Verizon is moving
38 away from the copper lines to its FIO system. And I just wonder about the length of time
39 and viability over the long run. And the second point that I had is related to the
40 municipalities' concerns about their split service, and also the issue of the PEG
41 channels. The PEG channel issues of numbers, there is a variation among the cable
42 providers, but we worked very hard with Verizon to try to cover a complete municipality
43 at one time. So understanding the HUB relationship to this rollout would be helpful, too.
44 And also, I want to be clear and have some understanding of the speed issue becomes



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1 variable here, perhaps more than in other cases. So what are they going to do to
2 explain their service if someone should subscribe? Thank you.

3
4 President Knapp,

5 Thank you. I just wanted to comment on Item 2D, in which will be reappointing Karen
6 Orlansky as Director of the Office of Legislative Oversight, and commend her for her
7 efforts. I have now worked with her for the last five years, and she leads a tremendous
8 team that provides the Council with an amazing amount of information that helps us do
9 our job much more effectively and much more thoroughly. And so I thank her for her
10 leadership and look forward to continuing to work with her in the coming years. I see no
11 more comments. All in favor of the consent calendar? That is unanimous. Moving to
12 legislative session. Day number two. Is there a Legislative Journal to approve? There is
13 no journal. We have one Bill for introduction, Expedited Bill 1-08, Personnel Disability
14 Retirement - Group F and G, sponsored by the Council President at the request of the
15 County Executive; and public hearing is scheduled for February 5th at 1:30 p.m. Mrs.
16 Praisner?

17
18 Councilmember Praisner,

19 This legislation responds to individuals who, when they saw what the impact was of
20 calculating the -- their benefit, saw that the calculation would be different and, therefore,
21 this is more beneficial. But my concern is one of -- the next group that may come by and
22 say their benefit would be more beneficial going back to the old way of doing things.
23 And I think we need to have something in our clear message as the Council reviews this
24 issue of making sure we don't move it every time someone benefits from it one way or
25 the other.

26
27 President Knapp,

28 Great. Thank you. I see no further comments. The Bill is introduced. Moving to District
29 Council session. We have introduction of Zoning Text Amendment 08-01, Green Area -
30 Definition, by Councilmember Elrich. We have before us action for resolution to
31 establish public hearing for February 26th at 1:00 p.m. Is there a motion?

32
33 Councilmember Praisner,

34 Move.

35
36 President Knapp,

37 Moved by Councilmember Praisner; seconded by Councilmember Berliner. All in favor?
38 That is unanimous among those present. I see no comments. We now turn to a briefing
39 on the 911 service interruptions. As I think everyone is aware, in the month of
40 December we had a period of time in which our 911 system was not operational, and
41 some calls were not being responded to or not going through. This is the third time I
42 believe this has occurred in the course of the last calendar year, and it is of great
43 concern to all Councilmembers and to our residents, and this is a briefing on behalf of



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1 the Executive Branch to get an update as to what did occur and what are the actions
2 being taken to ensure that this isn't going to occur further.

3
4 Unidentified,
5 [Inaudible].

6
7 President Knapp,
8 Okay, great. Thank you very much. Men, I don't know who is the -- Chief Manger, are
9 you -- who is leading our presentation?

10
11 Bill Ferritti,
12 I'm actually going to -- Bill Ferritti, I'm the Deputy Director of Police 911. I'm going to go
13 over a brief Power Point.

14
15 President Knapp,
16 Thank you, Mr. Ferritti. Good morning, Chief.

17
18 Mr. Ferritti,
19 I wanted to start with just an overview about how our system works and how we
20 interconnect with the public switch telephone network. And I thought that might be
21 helpful to put this outage in context. When an end user from their home or their
22 business makes a call, it goes through a local end office that Verizon owns, and it
23 travels through one of two 911 routers that exist in the Verizon overall network to one of
24 our two 911 centers. At the primary center, we have a -- our primary 911 PBX system.
25 We also have POTS lines -- plain old telephone system lines, which serve as a bridge
26 gap system, if you will, in case there is an outage here, and to get us to the backup
27 center where there is also a complete redundant 911 PBX system. Normal everyday
28 operations calls route to us along the black lines through one of those two routers, and
29 they come to us and they're answered by operators. If we were to go to our POTS lines,
30 we actually have a set of mechanical keys in the center that we throw which moves the
31 traffic from those two routers to those POTS lines. We exist on those POTS lines for a
32 brief period of time while we transition our staff to the backup center, and at that point,
33 there is also a set of mechanical keys there that we then activate to move the traffic to
34 that center. On December 16th at approximately 10:44, an event occurred in the
35 Verizon network in one of their offices which unbeknownst to us caused the key here to
36 activate and move a piece of our traffic to the POTS lines, our backup lines in our
37 primary center. At no time during the complete outage were we ever not receiving 911
38 calls into the primary system because they were routing via the other router. So we
39 were constantly getting calls on our primary system. At 11:06, we were notified by the
40 Verizon Network Operations Center -- Surveillance Center that they had detected a
41 problem and asked us, did we throw our keys. We said, no, we had not. And they asked
42 us, are you receiving traffic? And we said, yes, we are, and in effect, we were. That call
43 ended and did not raise any alarms to our local staff that we had a problem, because
44 we had never seen this type of split operations, nor did we ever expect to have that type



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1 of operations because we did not activate the keys. Approximately 11:41 -- I'm sorry --
2 about 11:30 that morning, we started receiving calls from citizens saying, hey, we're not
3 getting through to 911. It started out as a regional problem. We reengaged the Verizon
4 Surveillance Center and Network Operations Center, and they started looking at a
5 regional problem. It then grew to a county-wide problem. We realized that there was
6 something going on in the overall network which was causing us not to get traffic to our
7 primary system. But again, it was still a partial problem because we were still getting
8 calls of some variety. And both --over both land line and cell phone, that didn't seem to
9 matter. Finally after going through tier 2 support, Verizon was engaged with multiple
10 levels of their operational people. They finally discovered that in fact in fact a T1 had
11 failed in this office. One of the things being carried on that T1 was our throw keys. It had
12 caused them to short out and it moved a piece of our traffic. So at 1:28 that situation
13 was corrected and all our traffic was returned to the 911 PBX, the primary system. Just
14 also as an overview, this is what one of our 911 call-take consoles look like. Typically a
15 911 operator is actually using a graphical interface computer system as an interface to
16 the 911 phone system. They interact with that -- a computer dispatch system, and the
17 map. And then over here on this side of the desk there is a jack where they would plug
18 in those backup phone lines in case we, you know, if we had an emergency and we
19 said, hey, we're going to actually move traffic. We plug phone lines in there and take
20 calls there. On the 16th, traffic was moved because of the failure to our POTS lines. At
21 that time we had one phone line plugged in -- one phone actual device plugged in. We
22 had kept that plugged in, in case there ever was an accidental call that got sent to the
23 backup system, but we had never anticipated there would be a failure in our office that
24 would actually move more than an occasional call there. That phone did not ring on this
25 particular date because there was actually a faulty seated strapping clip here and a
26 broken wire here. This actually operates in a serial hunt group. So calls start at position
27 1, and they move until they find an active available phone. So that's why we did not
28 receive calls on the backup system that day. Once we -- as the situation kept -- was
29 escalating and we kept going from a regional problem to a county-wide problem, we still
30 didn't understand the exact scope of what was going on, a number of corrective
31 measures were being taken, but without any success. At approximately 12:40, 12:45,
32 we made the decision that we needed to notify the public that we were having some
33 difficulties with 911. That was initiated by the Public Safety Answering Point, Police
34 ECC. We notified both the police and the fire PIO's. The fire PIO actually made verbal
35 notification to various press offices and the Montgomery County Police issued a press
36 release. We also contacted the Homeland Security Department and they initiated Alert
37 Montgomery to those that are subscribed to that. And as part of that we -- part of the
38 message was we were having a partial outage, and that we provided our alternate
39 phone number or non-emergency number for people to call in lieu of 911 if they found
40 that 911 was not working for them. Corrective actions that we've been taking to date so
41 that this problem does not recur; Verizon has informed us that they've implemented new
42 procedures in their Surveillance Monitoring Center so that they would provide us quicker
43 and better information when there was an actual throw-key activation so that we could
44 act differently. And so that we don't have a repeat of the problem that we had with our



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1 backup lines, we have reconfigured those. And what we've done is we now have four
2 phone lines plugged in at all times, and we have them spread throughout the room. And
3 the reason they're every six stations is because we also added a feature to the hunt
4 group itself that if it hits any particular station, it can roll up to six stations if for some
5 reason that phone or that strapping device clip happened to be bad. So it will move from
6 phone to phone within that backup system. But again, this is an analog system, and as
7 it says, it's a plain old telephone line. They're no different than the phones in your
8 house, and they're designed as a bridge in order to get us down to Rockville so that we
9 are taking calls while we transition to our backup center. We should have one more
10 slide. There we go. Some other things that we are continuing to do at this time, we have
11 asked Verizon and they provided us a preliminary review of all of our monitoring
12 systems that are being monitored. Verizon actually provides 24/7 monitoring for our
13 data networks, our voice networks, our PBX and our end-user equipment -- the actual
14 phones and computers that are in the center. And they have provided a list of those to
15 us so that we can review them and decide if there is any additional monitoring that
16 needs to be done. But as an example, the PBX itself, there is over 11 pages of alarms,
17 different conditions that they are currently monitoring in that system. We have also
18 contacted the National Emergency Number Association and asked them to provide us
19 as a resource, just come out and look at our system and our redundancies, and to see if
20 there is anything we have overlooked that maybe we can changed in our operations.
21 Finally we are looking at additional hardening of the backup POTS lines in those
22 phones. We are talking with Telecom come and also with Verizon to see if there is a
23 better phone that we can use that will allow us to keep them all plugged in at once and
24 still be able to make them not busy -- not ready on an analog system. Thank you.

25
26 President Knapp,

27 Thank you for a very thorough overview. I also want to see if anyone else at the -- Chief,
28 if you had some remarks that you wanted to make, and also see if Verizon wants to
29 come up to the table as well, and if you have any remarks to make.

30
31 Chief Thomas Manger,

32 Mr. Knapp, thank you. And we appreciate the opportunity to respond to the questions
33 that they Council had. This is certainly a service that the government provides that the
34 public, like air traffic controllers, I mean, it just has a zero tolerance for failure, and
35 rightfully so. The public has every right to expect that this is a system that will not fail.
36 One of the things -- when we did this exhaustive investigation into why this occurred, we
37 were able to -- I guess the good news is we were able to determine exactly what went
38 wrong so that we could fix it. But one of the other things that Mr. Ferritti did not mention
39 is that just about every single day the ECC staff, Bill himself, goes on the internet, looks
40 at 911 failures all over the country. And to look when they occurred, why they occurred
41 and look at those things so that we can look at our system and anticipate maybe if
42 there's something we can do to prevent a problem that has occurred somewhere else.
43 We're not just waiting to see, well, we'll fix this and see if something else breaks. We're
44 really being proactive to try and look at other 911 systems to make sure ours will not



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1 fail. And I was pleased that we were able to determine exactly what went wrong on our
2 end. We have some quick fixes that we put into place. And we'll continue to work with
3 Verizon so that their portion of it gets strengthened as well, because obviously this is
4 something we do not want to see happen again.

5
6 President Knapp,
7 Thank you very much.

8
9 Brianna Gowing,
10 Good morning, Mr. President, and Councilmembers. It's good to see everybody back.

11
12 President Knapp,
13 Introduce who you are.

14
15 Brianna Gowing,
16 Brianna Gowing, with Verizon. Thank you for giving me the opportunity to address the
17 Council. Verizon recognizes the critical nature of reliable 911 service and we take our
18 responsibility very seriously. Verizon regrets the equipment failure that caused 911
19 service interruption on Sunday, December 16. We've worked closely with the County to
20 develop a comprehensive approach to the 911 system and a disaster recovery plan with
21 multiple redundancies and a backup system. On that Sunday, as designed, an alarm
22 signaled the problem and Verizon contacted the Emergency Communications Center
23 director. The alarm also triggered some 911 calls to be rerouted to the backup lines,
24 which are the center's POTS lines as you saw. Unfortunately, many of the County's
25 POTS lines were not plugged in and that led to some of the 911 calls not being
26 answered. Both Verizon and the County are in the process of taking steps to prevent a
27 similar problem from happening. For example, Verizon is retraining its network control
28 center employees to communicate more quickly with the customer, and to perform
29 additional tests. We'll forward our final recommendations to Bill Ferritti and the County's
30 police department.

31
32 President Knapp,
33 Thank you very much. Thank you for a thorough explanation. As you might imagine,
34 there are a number of questions that Councilmembers may have. So we'll first turn to
35 the Council Vice President and Chair of the Public Safety Committee, Mr. Andrews.

36
37 Vice President Andrews,
38 Thank you, Mr. President. Good morning, everybody. Well, Chief Manger, as you said,
39 this is a system that is of the utmost importance, and one, the County and the public
40 has to be able to rely on it entirely. And so what appears to have happened here is a
41 failure in two stages at the same time; one, with a Verizon line, and second, with the
42 backup system in terms of the wiring connections for the plain old telephone system. So
43 the questions I have are one for Verizon and one for the police department. That is,
44 what is Verizon doing in the way of preventative maintenance to reduce the possibility of



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1 a similar problem on the connection of the Verizon line? And then for the police
2 department, what kind of monitoring are you doing of the wiring system at the 911
3 center? How frequently are you inspecting the wiring connections for the plain old
4 telephone system to ensure that there is not a failure there? So those are the two
5 questions I have at this point.

6
7 Brianna Gowing,

8 Well, as I said, we're doing some retraining with our staff to make sure we communicate
9 even faster should anything happen. And we do have the alarms that go on off all the
10 time. We're doing more training to make sure we communicate even better with the
11 customer and say exactly what's going on and what we suggest they need to do. We
12 also will have some final recommendations, which include, you know, hard wiring all 17
13 lines of the backup and some other things, just to ensure that everything is working like
14 it should be. Like it is when we have a test.

15
16 Vice President Andrews,
17 Okay.

18
19 Chief Manger,

20 The way the clip that plugs the telephones in is configured on the console, we've
21 determined that there is any number of ways where that clip could be hit, jostled and
22 come loose. So we are now covering the clips so that things can't touch the clip. I mean
23 they're under a cover. And in terms of the frequency of inspection, we do inspect -- I'll
24 let Mr. Ferritti talk about that, but one of the things, as he explained, is that we've now
25 made some changes so that it's not just the system going to the next one, going to the
26 next one. I mean, it has the ability to go to the next six. And so if there's any problems in
27 between, it's going to go to the next one -- it will get to one that's working. But in terms
28 of the inspection, I'll let Mr. Ferritti talk about that.

29
30 Mr. Ferritti,

31 As the Chief said, from a software perspective, we made a change in how our lines
32 configured so it will roll to the next one and over and over up to six times so that any
33 single station or device will not cause us to not receive traffic. The hardened covers
34 were actually installed this week, so each one of those straps is now protected. We
35 were testing those on a quarterly basis as part of our move to the backup center.
36 Whenever we move -- whenever we move any of these -- activate any of these keys, we
37 would thoroughly test all of the lead numbers to make sure that traffic was going exactly
38 where we thought it would. We're going to increase our testing of those to a weekly
39 basis to make sure that we can actually watch -- watch calls -- test calls roll through the
40 entire backup system.

41
42 Vice President Andrews,

43 There is a technology that's used in places, and I don't know if it's used here or not, that,
44 in effect, tests the heartbeat of a system on a regular basis to ensure that it's



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1 responding and triggering a -- some kind of reaction. Is that employed with this system,
2 and is it something you're thinking about to -- that might help during slow periods, for
3 example, to ensure that calls are actually -- that are coming in are being noticed or
4 being triggered in some way by the system?

5
6 Mr. Ferritti,

7 On the primary PBX systems at both centers, they are monitored 24/7. And heartbeats
8 are part of that. And in this case, we did get -- Verizon did get an alarm and did call to
9 say, yes, there is an alarm and there is a problem. This was the communication of that
10 information to us where we did not get the complete information. In terms of the POTS
11 lines, there is not a capability -- they're just plain old copper lines just like in your house.
12 There really is no capability to put any type of alarm or technology on those. We are in
13 discussions with Verizon and we've asked the question, is there a way we can use a
14 slightly more advanced technology in terms of those POTS lines. But I want to caution
15 you; and we're being very cautious. One of the functions of the POTS lines is to be very
16 simple. So that if all other technologies are out, we would still have a base phone
17 that is powered by the copper lines that will work, so if all other systems -- all of the
18 power is out, we will still have that system to answer 911 calls. So we're looking for the
19 balance.

20
21 Vice President Andrews,

22 I see. All right. Well, the simple maintenance is critical then; the checking, the regular
23 checking to make sure that the basic things are done in terms of wiring, which is
24 something that is critical in a backup system like a plain old telephone system. Thank
25 you.

26
27 Brianna Gowing,

28 Councilmember, if I could add one other thing; there is a brand new piece of equipment
29 called Network Control Modem that hasn't been sold yet in Maryland. So we're trying to
30 get that approved to sell here and get a tariff for it. And we believe that that would go
31 much further towards preventing something like this.

32
33 Vice President Andrews,

34 Thank you.

35
36 Councilmember Berliner,

37 Thank you, Council President. My questions go to Verizon. As well as you can
38 appreciate, I have some constituents who were among those that had a fire and called
39 911, and they were berserk. And so the question to you is, how long did it take before
40 you realized there was a problem? How long did it take to communicate that
41 information? And what was the lack of communication? What was the nature of the lack
42 of the communication and why?

43
44 Brianna Gowing,



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1 Well, I understand it took too long. It was something like 22 minutes for our Network
2 Operations Center to call the county.

3
4 Councilmember Berliner,
5 Can you stop there? And what happens? Isn't there, like, an alarm literally that goes off,
6 in which case you're going, hello?

7
8 Brianna Gowing,
9 Well there's an alarm that goes off, and what they normally try to do is some kind of
10 investigation and make sure it's not a false alarm; do a little bit of triage before they call
11 the customer. So that's what they were doing before they called the customer. Now
12 that's part of the retraining. From now on we're going to say, call the customer
13 immediately, and then do your triage. And then, you know, err on the side of over-
14 communicating. And then, I guess we assumed that because the alarm went off, the
15 County would know or have the backup phones plugged in, and they would receive calls
16 that way. So I guess there wasn't a direct, you know, be expecting your backup system
17 to be enacted. So I guess there was some assuming there, but the training that's going
18 on is also going to include additional testing. If an alarm goes off and we call the
19 customer and they say, we're not having any problems; we're going to immediately start
20 testing all the trunks. So that's part of it to make sure nothing like this happens.

21
22 Councilmember Berliner,
23 You perform this service in other parts of the country I assume?

24
25 Brianna Gowing,
26 Yes.

27
28 Councilmember Berliner,
29 Do you have other problems in other parts of the country as well?

30
31 Brianna Gowing,
32 Occasionally, yes, there are problems. Now everybody's configured slightly different.
33 You know, the County set it up, you know, a specific way, and so -- I don't know if
34 anybody's exactly the same. A lot of the counties that have a backup system, they
35 usually go to another center. They usually go, you know, they have -- calls would go to
36 St. Charles County, or somewhere else, in the way some are set up. So this is set up a
37 little bit different. And a lot of smaller towns and counties don't even have a backup
38 system. So -- and we do try to learn if there is a mistake. We all try to learn from that.

39
40 Councilmember Berliner,
41 I get that, and I certainly assume that that's the case, as my colleagues have said and
42 as the Chief has said. There is zero tolerance for a mistake in this area, and so I
43 certainly hope that you've taken this responsibility seriously. My last question is, the
44 constituent that has written to me has said, what this underscores from his perspective



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1 is the need to have the telephone number directly instead of relying exclusively on 911
2 to be able to call a fire house directly; and how that information can be given to
3 residents. And the suggestion was, quite frankly, that this was your responsibility given
4 that, if you will, this was your failure, and that you ought to take it upon yourself to
5 ensure that people in Montgomery County know how to get in touch directly should 911
6 fail. Would you care to respond to that? And I would appreciate the observation of
7 others on the panel as well with respect to that.

8
9 Brianna Gowing, 71

10 Well, I'll definitely take that back, and if you have any suggestions, maybe that's
11 something we could have on our bills or something like that.

12
13 Councilmember Berliner,

14 On bills or those magnets on -- it's kind of hard to find it on the bill if your house is on
15 fire. You know, it's not the first place I go. I don't know if I go to the refrigerator, but
16 maybe. But some way in which it's very simple for people to know, maybe on their
17 phone or otherwise, that this is how you can address the situation if there is a future
18 problem. Chief?

19
20 Chief Thomas Manger,

21 I think it's important -- I mean, we make every effort to get the phone numbers of the
22 police stations, and I know that Chief Carr gets the numbers for the fire stations out. The
23 balance we have to be aware of here is that we don't dispatch from those locations. The
24 importance of people knowing those numbers to the direct stations is if they're having
25 trouble getting through on a 911 call. That's -- if they tell the person that answers the
26 phone at their district station, I tried to dial 911, can't get through. We can immediately,
27 then, contact our communications center and let them know that we're having that
28 problem. So that would be the value of it.

29
30 Councilmember Berliner,

31 I am not suggesting it is anything other than the ultimate backup, and that we don't want
32 to encourage our citizens to be calling that in lieu of 911.

33
34 Chief Manger,

35 So we certainly have done everything we can to get the numbers out to our district
36 stations for -- you know, that's the number to ask when you have, for instance, an
37 ongoing problem. It doesn't necessarily require dispatch of an officer now. So we've got,
38 I mean, think have made good use of using the district stations as an information source
39 for the public, and perhaps, you know, as we do the 911 magnets for people's
40 refrigerators or put on their phones or whatever, we can do six different versions and
41 have the district station numbers on there as well; or we can just do a public education
42 campaign on know your police district and know where your local fire station, local
43 police stations are, and know those numbers as well, because those are useful
44 numbers to know in a lot of situations.



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Councilmember Berliner,

I would appreciate your attention to that, and thinking about it, I am not -- I believe it is worth serious consideration.

President Knapp,

Thank you, Councilmember. Before I turn to Councilmember Praisner, we have other Councilmember with questions; I'm going to try to take this for another 10 minutes. We have a number of folks here on the base realignment and Closure Commission that we're supposed to address at 10:30. I know there are a number of questions on this issue. There is a Public Safety -- an MFP Committee meeting on Thursday. Part of that is closed session, but this is not a topic that's going to go away soon, so I just want people to know if we only go another 10 minutes, it's not that we're giving short shrift to this topic. There are a number of meetings that the Council has scheduled on this topic to make sure that we have this fully vetted and understand where the peace is. So with that, I turn to Councilmember Praisner.

Councilmember Praisner,

Thank you, and thank you, Mr. President, for scheduling this. Just a couple questions. Obviously, Thursday would be a better time. I'm still a little troubled by the fact that it appears that up until this incident, the County did not have a detailed description of the 24/7 monitoring process at Verizon. And that you're now -- you've requested it and you're going to get it. It would seem to me that anyone who has a 911 system and a relationship with a telephone provider should know what the protocols are in both places. There should be shared information, something in a manual that is stored at the 911 center, and something at Verizon that tells you what the monitoring is, what the protocols are, what the process is people turn over every day. And there should be -- I don't think we should be asking now this many years into the system in relationship for a detailed description of how you monitor. Am I clear that -- or did you say that it will not be manual any more? It an automatic flip to POTS, or is there still a manual action that's necessary?

Bill Ferritti,

No, it's still a manual action.

Councilmember Praisner,

All right. I want to have a discussion of whether that must remain a manual process, and if there is something that can be done that automatically shifts it. I'm not a technology guru, but any time you have human interactions, yes, technology can fail, but human interactions can exacerbate the problem. And certainly, there was a communication problem here. The last question I have relates to NINA and what we expect to get from them, and what timetable or follow-up we have as far as NINA is concerned.

Bill Ferritti,



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1 We have just reached out to them initially. We've had two conversations with them
2 about what resources they could provide to us to come in and do a review of our system
3 and of our redundancies to see if there is any best practices that we have missed that
4 we can implement. We're looking at our -- on our side and on the Verizon side, are there
5 additional monitoring that we should be doing? Is there a different configuration that we
6 could put in place that would give us better redundancy?
7

8 Councilmember Praisner,

9 And my last comment -- not a question but a comment, is I was not totally pleased with
10 the notification process to the public. I don't think we exhausted all the methods that
11 were available, and I'm a little troubled by the steps that have to go through between
12 police notifying the PIO for police and then fire, and a question of when the Public
13 Information Office is involved; but it seems to me that when I turn on the Rockville cable
14 station, I can find fairly immediately when there is an emergency through a trailer
15 process across the screen. And I just didn't see that at home on our county cable. And I
16 do think there are other methods that we should be more aggressively exploring than
17 we have used to date as far as the general public is concerned. The cable providers are
18 also supposed to notify and be used in an emergency; and I just wonder how -- what
19 protocols there are, and how that was activated, if at all. Those are my questions.
20

21 President Knapp,

22 Councilmember Elrich.
23

24 Councilmember Elrich,

25 How much redundancy is there in the POTS lines and how many additional do we need
26 to - add additional lines, and how many to assure we can handle the call volume, if
27 that's what we're forced to rely on?
28

29 Bill Ferritti,

30 There are 17 lines in that hunt group, and in fact, we just had -- took some out. We had
31 them at our dispatch work stations also, but we -- in talking with Verizon, we decided it
32 was best to limit it to 17, so it allows us to take seventeen 911 calls simultaneously.
33 That's would be approximately two-thirds of what our current 911 trunks allow. One of
34 the reasons we did that was so that we'd have less work stations where there could
35 actually be a problem. It was a more manageable number. And it puts us in our call-
36 taking area within the 911 center. When they were initially installed, they were installed
37 at both call-taker and dispatcher workstations. But through our emergency plans and
38 practices, we found that we actually move people around during our backup operations.
39 We actually move people to the call-taker side -- both police and fire call-takers, so that
40 we didn't actually need the other lines. So that we didn't have lines out there associated
41 with this hunt group that could cause a problem, we went ahead and removed them.
42

43 Councilmember Elrich,



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1 Well if it's two-thirds of what your the volume is, what are the implications that if you had
2 to rely on POTS, what does it mean for a person [inaudible]?

3
4 Bill Ferritti,

5 Well we have 17 lines, which means we have the capacity for 17 call takers. Normally
6 we have approximately 10 to 12 call-takers. So we can up-staff five more call takers and
7 still be using the POTS lines.

8
9 Councilmember Elrich,
10 Okay.

11
12 President Knapp,
13 Councilmember Floreen -- oh, I'm sorry, Councilmember Trachtenberg.

14
15 Councilmember Trachtenberg,
16 Thank you, Council President Knapp. Just a quick question of Verizon. I understand that
17 the County actually requested a description of the monitoring, and I'm assuming that
18 request came within a week or so of this event in mid-December. So when can we
19 expect that description? Do we have a date set on that?

20
21 Brianna Gowing,
22 That I don't know, but I can get that information for you.

23
24 Councilmember Trachtenberg,
25 Yeah, well, I'd actually like to do a little better than that, which is to suggest that we'd
26 like to have that shortly. I'm reminding folks that we had a similar conversation about
27 another problem a few months back within MFP, and I am hopeful that, again, we get
28 more detail and clarification around a protocol. So I would suggest that we need to have
29 that description shortly, perhaps by the end of this month.

30
31 Brianna Gowing,
32 Okay.

33
34 President Knapp,
35 And final question, Councilmember Floreen.

36
37 Councilmember Floreen,
38 Thank you. What troubles me most about all of this, and I know there are explanations -
39 - is that this happened twice in a very short timeframe. And I've read the explanation,
40 and, you know, and I've heard, you know, your descriptions, and I know you're working
41 hard at trying to address this. I believe it's a fundamental requirement of our function as
42 a recipient of federal funds that we've got to have an operational 911 system. But I've
43 got to say, I think we need to look at perhaps another backup system as well. I love that
44 the backup system that you have is really like the old-fashioned kind, reliable covered-



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1 wire thing. Probably the phones -- none of this mobile stuff, none of this wireless stuff,
2 old fashioned. But two incidents in a really short time is what scares me the most. I think
3 it's incumbent upon all of us to take a page from other jurisdictions books, if that's
4 necessary, to make sure we have all the backup capability that we need. Because we
5 all know things go wrong. They will go wrong no matter what we do. And we can't be
6 105% certain of anything in this life. And so I would say to you, please, I hope that you
7 look at that as you discuss this in committee and as you reevaluate your own priorities
8 and choices out there. I really think this is such a fundamental service and such a
9 fundamental need that we need to continue to address and need to solve. I'm not -- I
10 believe in technology, no question about that, but sometimes we -- perhaps we over
11 think things, and depend on other resources that have their own challenges in reliability.
12 So I ask you to give some serious thought as to what other backup systems might be
13 out there for the inevitable. We know that now that this is inevitable, no matter what we
14 do with the best of computer upgrades, with the best of minds thinking about this. Stuff
15 is going to happen, and we need to be ready. Thanks.

16
17 President Knapp,

18 Mr. Andrews, Chair of the Public Safety Committee, has one final question.

19
20 Vice President Andrews,

21 All right. You mentioned that the plain old telephone system capacity is about two-thirds
22 of the general trunk capacity for the 911 system, so I'm assuming the capacity then is
23 about 24 or so if it's two-thirds. What is the -- how is that capacity decided upon in terms
24 of -- obviously, that's enough in a regular emergency -- a regular emergency day-to-day
25 situation, but what is the planning for -- and you don't have to answer this immediately,
26 but it's something I'd like to have a discussion about -- for a mass emergency. If the
27 ability to increase call takers is there to some degree, what is the ability to get the calls
28 through if you were to get more than -- if you're getting 50 or 100 at the same time, is
29 there a way to manage that without simply having people line up in a queue for the call
30 taker. What's the planning for a mass emergency event, and how would the system
31 respond to that? So that's something I'd like to bring back for another day, because that
32 raises an issue since you mentioned the capacity being about that level. Thank you.

33
34 President Knapp,

35 Okay. With that I -- clearly you have seen from the Councilmembers this is an issue that
36 is of great concern. It is something as you've said, Chief, that we -- that can be zero
37 tolerance. And so I appreciate your willingness to all participate. Chief, I thank you for
38 joining us, Assistant Chief Tracy, Ms. Gowing, for coming up. And Mr. Ferritti, for your
39 completeness in a response. And we look forward to seeing most of you, I guess, again
40 on Thursday as we delve more deeply into this. So thank you very much, and thank you
41 Councilmembers for your questions. With that we turn to our discussion on a briefing on
42 the Draft Environmental Impact Statement to implement the Base Realignment and
43 Closure Actions at the National Naval Medical Center in Bethesda. We have a fairly
44 short turnaround on this, about a week and a half from today to actually get the



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1 County's comments turned back into the Navy. And so we have today a briefing on the
2 part of a number of folks -- I'll walk through them in just a second. The Planning Board
3 has made some review and given us some comments. And as I understand, the County
4 Executive's Task Force is meeting this evening to generate its comments. And then the
5 Council will have feedback from the County Executive next week, as I understand it, for
6 us to take final action and recommendations as we want to include in our comments. So
7 we have before us today, as I understand it, from the Navy Mr. David Oliveria, BRAC
8 Program Manager NNMCMC Bethesda; from the Planning Board, Chairman Hanson. We
9 also have the Executive Staff, General Holmes from DPWT, and then we also have Phil
10 Alperson, who is a BRAC Implementation Coordinator. I turn to -- I'm sorry, I've already
11 butchered it once -- Mr. Oliveria.

12
13 David Oliveria,

14 Good morning, Mr. Council President, members of the Montgomery County Council and
15 staff. My name is David Oliveria. I am the government employee currently serving as
16 the Base Realignment Closure Program Manager with the Navy Medicine National
17 Capital area. In this capacity, my responsibilities include oversight of the realignment of
18 medical and administrative activities from the existing Walter Reed Army Medical
19 Center to the National Naval Medical Center Bethesda, which will be renamed the
20 Walter Reed National Military Medical Center Bethesda following the realignment. To
21 support the realignment, we have identified the need to approximately double our
22 patient business over the current business to NNMCMC. And patient capacity will increase
23 from the existing 221 staff beds to a capacity of 346 beds. Additionally, we have
24 identified a need for an increase of approximately 1800 additional parking spaces; over
25 50% are directly targeted for patient and visitor support. This requirement will help us to
26 meaningfully accommodate a projected 1,862 additional patient and visitor trips to the
27 campus each day during the Monday through Friday period. Additionally, we plan to add
28 or renovate the existing buildings to provide for the intrepid center of excellence for
29 traumatic brain injury and post traumatic stress syndrome inpatient and aftercare; a joint
30 warrior transition unit clinic; and medical admin space for transition aftercare and patient
31 family education; a bachelor enlisted quarters to billet junior enlisted staff; replacement
32 fitness center serving added patients and staff; two fisher houses delivering home light
33 reintegration and lodging for recovering patients and their families; and additional
34 administrative facilities to support the new patients and any additional staff. As you are
35 no doubt aware, we are required by the National Environmental Policy Act, commonly
36 known as NEPA, to prepare an environmental impact statement which details the
37 impact the realignment will have on our environment. The EIS process began in
38 November 2006 when we formally notified the public of our intentions to prepare this
39 statement. Our notification was followed by public scoping meetings, the substance of
40 which assisted us in the preparation of the draft EIS. The EIS was made available for
41 public comment on December 14, 2007. The Navy hosted public hearings on the 9th and
42 10th of this month to provide an opportunity for the public to present oral comments
43 regarding the substance of the document. The public review and comment period will
44 end on the 28th of January, 2008. All comments submitted concerning the DEIS, draft



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1 EIS, by members of the public and federal, state and local agencies will be carefully
2 reviewed and addressed in preparing the Final Environmental Impact Statement, or
3 FEIS. The current schedule calls for the publication of the FEIS in April of 2008
4 timeframe. When the FEIS is complete, a formal notification will be published in the
5 Federal Register and in the local newspapers of record to inform the public that the
6 FEIS has been publicly released. Importantly, the Federal Register notice will also mark
7 the beginning of a required 30-day wait period, also referred to as a No-Action Period.
8 When the wait period is completed, the Navy will submit a record of decision, or ROD,
9 for the completed Environmental Impact Statement for review to the Secretary of the
10 Navy. Approval of the ROD by the Secretary of the Navy will be officially published in
11 the Federal Register. In closing, I'd like to note that those of us who live and work in
12 Bethesda and NFC Bethesda greatly value our positive relationship with our host
13 communities. While BRAC has and will continue to provide challenges, it is comforting
14 to know that our hosts understand our mission and are as committed to succeeding in
15 that mission as any one of us who works on the campus. They are -- have proven they
16 are patriots without equal, and certainly deserving of our respect and admiration. On
17 behalf of the Commander of NNMC, Admiral Jeffries, and the Navy, I thank you for this
18 opportunity to be here today.

19
20 President Knapp,

21 Thank you very much for joining us. We appreciate your comments. I was going to ask
22 Councilmembers to hold any questions; let's get through all the presentations, and then
23 we'll have a discourse with the folks at the panel. Our next up to speak is Chairman
24 Hanson to give us the feedback from the Planning Board.

25
26 Royce Hanson,

27 Mr. President, thank you. It's good to see Ms. Praisner back. The Planning Board review
28 you have before you, and Mr. Animani is going to take you through the
29 recommendations that we made. There are just a few things that I want to emphasize
30 that the board felt were very important. One is that there are a number of places in the
31 draft EIS where the information really just needs to be expanded and more accurate
32 than full information needs to be provided. The increase in patient and visitor to the site
33 places an extraordinary burden on the transportation facilities of the area, and the board
34 believes that major emphasis should be placed on an east entrance to Metro; that that
35 should be done in the short term rather than set aside as a long-term objective. We
36 think that the Defense Access roads issue is greatly underplayed in the draft EIS, and
37 that the Defense Department needs to be far more inventive about their use of those
38 funds to provide a better and adequate access to the site. That the housing issue and
39 the impact on communities, I think is not as well developed and expressed as it needs
40 to be. There is particularly a very likely need for more housing on base for visitors and
41 outpatients, and more attention to temporary housing off base for visitors to the site.
42 The EIS says it expects to have no long-term demographic effects on the area. We think
43 that this is at best an understatement. In the short term that might be correct because of
44 the location of workers at Walter Reed and the fact that the two bases are not very far



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1 apart. Over the long-term, however, particularly as we look at the impact of energy costs
2 on transportation, the likelihood is that new employees are going to want to live closer to
3 the medical center and, therefore, we need to have a better address of the long-term
4 housing needs in the final EIS. I'm going to -- the one final thing that we think is very
5 important is that the specific development plans for the base be brought to us under the
6 Mandatory Referral Process so that we can continue to have a role in assessing these
7 measures. That includes parking which we think is overestimated in terms of its need,
8 and that we need to have a much more careful analysis with parking. But I'm going to
9 turn now to Mr. Animani who can take you through the particulars of the briefing.

10
11 President Knapp,
12 Thank you, Mr. Chairman.

13
14 Mr. Animani,
15 Thank you very much. Mr. President, members of the Council, good morning. I'm
16 [inaudible] Animani with Transportation Planning section. With me is Ms. Judy Daniel,
17 sitting here, to present and answer questions. Next, BRAC alignment the impact in
18 Montgomery County is due to the transfer of Walter Reed Army Hospital to Naval
19 Medical Center in Bethesda. This slide shows two build alternatives for the expansion of
20 the site. Alternate 1 proposes 1.44 million in square feet of new construction, 508,000
21 square feet of renovation, net increase in parking space 1800, new employees 25000,
22 new daily visitors 1860. Alternative 2 proposes 1.23 million in new construction, 423,000
23 square feet of renovation, and then the rest is the same as Alternative 1. The difference
24 in the two build alternative is that Alternative 2 increases impervious surface by 1.4
25 acres more than Alternative 1, for a total of 5.5 acres, but will preserve a historic
26 building. Therefore, staff supports Alternative 2 to preserve the historic building. Next?
27 The issues are, in this particular BRAC, is that it's urban; meaning that unlike many
28 other BRAC's around the country it is in a highly dense populated area with significant
29 constraints as what can be done to reduce the impact and direct impact concerning
30 neighborhood. It is visible meaning that the expansion of the campus must be done in a
31 way to preserve the historic and natural features that have significant visual effect on
32 millions of people living nearby or passing by the site for many years to come. Impact
33 on the community, as I said, is located near a densely populated area and the
34 community is directly affected whether it is transportation or housing or noise or air
35 pollution because of the construction. Lodging for visitors, of course, hundreds of
36 thousands of visitors are coming to the hospital to visit their patients and will not be able
37 to find affordable lodging, and DEIS has not really proposed anything that can deal with
38 that issue. Poor access and mobility as well as, we all know, transportation is the major
39 challenge for this BRAC. And site layout, design and construction refers to the historic
40 building environmental impact. Next? Our briefing here today recommends for
41 transportation, community and environmental planning, and historic preservation. Next?
42 Main Recommendation: among 24 recommendations in our staff report, we have
43 chosen 7 as our main recommendations that the in our view must be vigorously
44 pursued. There are those 7 recommendations. The future plans should be reviewed for



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1 mandatory referrals supporting second alternative; construct the bicycle -- I'm sorry,
2 pedestrian tunnel between the Metro Station and the Naval Hospital; complete sidewalk
3 bicycle facilities; and parking -- Mr. Chairman mentioned that. I think the number of
4 parking they have here is not really meeting the criteria that is set by NCPC; complete
5 TMP; and provide information on lodging need for outpatients and their families. Next?
6 Transportation recommendations basically are three -- in three categories. Next? Okay.
7 Transportation Management Plan, or TMP; the EIS has proposed bold and innovative
8 strategies in the TMP that could have a high level of success if implemented. Some of
9 those provisions include what we see here, and there are some others that we haven't
10 really listed all of them, but I think if they are all implemented, it can really help and
11 make a difference in the amount of traffic generated to the site. Next, please? There are
12 many physical improvements that could help mitigate some of the transportation impact,
13 but will need to conduct a comprehensive analysis of these recommended
14 improvements to determine if there are feasible for implementation. We have been able
15 to secure more than \$2 million funding for a comprehensive traffic study in the area. The
16 State and County plan to begin that study in the near future. This slide shows major
17 physical improvements that needs to be done and is listed in the DEIS, and we think
18 that we should study it further to see if they are feasible. Next? Okay, at this point, I'm
19 turning it over to Ms. Daniel.

20
21 Judy Daniel.

22 For the record, Judy Daniel with Park and Planning Team Leader for Bethesda area. As
23 you'll see, just in brief, I'm here because our concerns are about what's not there.
24 There's a lot of information we feel is lacking particularly relating to the lodging, as
25 you've heard. And then also some we feel omissions in regarding the impact on our
26 Master Plans. Next? Mainly, the amount of visitors who are going to be here, the
27 families of these wounded soldiers who are recovering, are going to be staying in the
28 area for a while, and there is very little information about how long they're going to be
29 there. We just know a lot of visitors are coming every day. But we need more complete
30 information on that because it affects our Master Plans and maybe the extra lodging we
31 might need in the area. Next? Second, the TMP, as you've heard before, we need it
32 now. I don't need it some -- eventually when the campus master plan is completed. This
33 is the key to non-vehicle access management. So we need that information now
34 because of the impact. Next? Next, sorry. Again, we do feel there are substantial
35 impacts to our Master Plan. Of course, we anticipated expansion NNH and Bethesda
36 Naval; we never anticipated expansions of this size in this timeframe. So there is a lot of
37 impacts that we need, and it does affect the area. Next? And then, finally, the
38 socioeconomic impacts; again, while immediate housing, as the Chairman mentioned,
39 may not be effected, long-term housing probably will be effected. And lodging will
40 probably be affected in the short-term. We don't have all that many rooms in the area
41 now. We have the North Bethesda plan underway. More knowledge of this will inform
42 that plan and Bethesda. Next?

43
44 Mr. Animani,



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1 At this time I'll briefly discuss the environmental and historic issues in the DEIS. The
2 environment: there are primary points of environmental concerns. Complete
3 environmental impact cannot be assessed without additional information. I think we had
4 been emphasizing that point enough, but we need more information. The primary
5 concerns are to include additional information relating to the Stream Valley Buffer for
6 the Stony Creek [inaudible] tributary. Graphic issue of the [inaudible] forest, and
7 clarifying the amount of forest on site. Next, please? Protect or provide amount of forest
8 required by the Maryland Forest Conservation Act. Protect existing natural resources by
9 locating placement of future soccer field. Provide a plan that includes deconstruction
10 and reuse of existing materials. Next? Next is the Historic preservation aspect of this
11 expansion. The naval hospital was constructed between 1939 to '42 to house the U.S.
12 Navy's principal center for the practice and dissemination of medicine related to the
13 needs of the naval service. The 20-story main tower block is the most significant
14 building on the property. Montgomery County has designated the entire site on the
15 Count's Master Plan for historic preservation in 1979. Next? Okay. The staff
16 recommends that the new construction respect and enhance the historical importance
17 of other buildings and courtyards on the site. The proposed additions should meet the
18 design parameter for the site and building include that we have listed there -- footprint,
19 building frontage, symmetry, and building height preservation of view sheds and historic
20 buildings. Next? Okay, I think this -- at the end I would like to say that we request that
21 they Navy provides us with upcoming plans for review by MNPPC as mandatory
22 [inaudible] so we can specifically come in on issues relating to all of the potential
23 impacts we have discussed here today. This concludes our presentation.

24
25 President Knapp,
26 Thank you very much. We now have General Holmes and Mr. Edwards.

27
28 Arthur Holmes,
29 Of course let me welcome the Council back [inaudible] Ms. Praisner.

30
31 President Knapp,
32 Art, turn on your microphone.

33
34 Arthur Holmes,
35 Welcome to the Council meeting coming back from a nice vacation I'm sure, and to Ms.
36 Praisner and her return. DPWT has transmitted its comments to the BRAC coordinator,
37 Phil Alperson, in the Executive Branch. We had numerous comments. Our comments
38 related to the DEIS include the following. We assume that one of the two action
39 alternatives will be implemented. Of the two action alternatives there is no significant
40 difference between them on the basis of transportation policy factors, because there is
41 no difference in development in either option. However, from a solid waste perspective
42 there is a benefit derived from Alternative 1 with renovation preferred over tearing down
43 and replacing existing buildings with new construction. DPWT strongly recommends
44 immediate action to complete the roadway and inspection and instruction improvements



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1 identified as potential traffic improvements in the DEIS. These include all of the internal
2 traffic improvements to entrance gates, perimeter roads and truck inspection stations.
3 Those offsite improvements would mitigate traffic impact, such as improvements should
4 the intersection in Rockville pike, Cedar Lane, Old Georgetown and Cedar Lane,
5 Rockville Pike and Jones Bridge, and Connecticut and Jones Bridge, and the
6 development, very quickly, of a transportation management plan. Though not
7 specifically mentioned in the DEIS, DWPT recommends that the M355 -- Maryland 355
8 corridor study be placed on a fast track along with the intersection improvements. The
9 great separation at Maryland 355 and Cedar Lane is in the Master Plan and the
10 County's Transportation Priority Letter to the County delegation. It is a number two
11 priority in the County's request to be included in MDOT's development and evaluation
12 program. The Maryland State Highway Administration should include and evaluate this
13 program in the project to study Maryland 355 corridor. DPWT recommends that the
14 pedestrian connection between the medical center metro station and the medical center
15 be built as either a tunnel or as an overpass crossing Rockville Pike. This pedestrian
16 improvement is needed prior to opening of the new medical center facilities in 2011.
17 This improvement will facilitate non-auto [inaudible] choices and improvement
18 pedestrian safety. The Maryland State Highway Association should also conduct an
19 evaluation of the feasibility and benefit derived by providing slip ramps from height 495
20 directly into the medical center property as a long-term improvement. In providing any
21 additional road improvements, it is important to ensure that facilitating vehicular traffic is
22 not accomplished at the expense of transit and pedestrian bike-friendly measures. A
23 major component of both short- and long-term solutions must be provisions for
24 alternative modes of travel both to preserve the effectiveness of the road improvements
25 to be made and to enable growth in alternative uses over time. In order to mitigate
26 onsite parking problems and to support non-auto travel, the Navy should commit to
27 expand their shuttle bus service to include shuttling employees and visitors between
28 offsite transit centers and park-and-ride facilities and the base. Shuttle bus service, if
29 implemented, during the construction stage would also serve to mitigate the impact of
30 construction traffic on surrounding networks. It is imperative that the final EIS include a
31 plan for managing construction traffic with specific requirements as to how this traffic will
32 be direct away from surrounding neighborhoods. A transportation management plan
33 must be completed and must incorporate specific programs, a clear set of goals, and an
34 implementation of specific strategies. Metro rail survey information and other transit-
35 related data must be considered in developing the TMP. Finally, it's important to note
36 that as a BRAC action, there are many impacts of this federally-imposed, unfunded
37 mandate on state and local facilities with no direct federal funding in the projects to
38 offset the costs of these impacts. Particularly with respect to transportation as indicated
39 by Sherman Hanson, the BRAC action should be adequately funded by the federal
40 government and specifically the Department of Defense to provide direct funding for
41 identified offsite traffic improvements. Thank you.

42
43 President Knapp,



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1 Now we turn to Mr. Alperson who has the task of trying to bring all of these -- all of the
2 county's comments together and put together a package so we can begin to forward so
3 -- as to what is our response and what is our process for getting to that response. You
4 can kind of walk through -- .

5
6 Phil Alperson,

7 Thank you very much. Welcome back, and welcome back, Mr. Praisner. It's nice to see
8 you. I've been -- as you say, I've been working with the BRAC Implementation
9 Committee, which consists of representatives of committee associations and local
10 business groups. I'm also working with County agencies trying to bring together the
11 various comments and opinions so that the County can submit a coherent and cohesive
12 and coordinated response to the EIS. I gave you a draft packet reflecting the BRAC
13 Committee's views. It's expensive. We have a very engaged community, very intelligent
14 community; they're all your constituents so you know that. And they have assembled a
15 pretty comprehensive and thorough list of comments. And I'm sure you'll be thrilled to
16 see them at the end of the month. I have also been collecting the agency responses
17 that you have, and we're now trying to assemble that into a letter that hopefully the
18 Council can cosign for County Executive Leggett. And I will try to get you a draft as
19 soon as I can. It's, you know, a very -- a very rapid process. As you know, the most
20 important number is 2011. Everything works backwards from the deadline to complete
21 construction of this process. Of the hundreds of BRAC projects throughout the country,
22 this is the last one. We are still considering an environmental impact statement whereas
23 many other BRAC actions are already well into their construction phase. So we have a
24 lot of catching up to do, a lot of work to do in a very short period of time; 2011 is like
25 tomorrow as this process goes. As you've seen, the memo I've given you has many
26 points, and I'm going to go try to whittle them down to the major ones for today. In short
27 -- and much of what I'm going to say has already been said this morning. In short, the
28 draft EIS is based on fraud assessments. We believe that reached some incredible and
29 unrealistic conclusions that allow the unique urban nature of this BRAC. Almost all of
30 the other BRAC actions are taking place -- are specifically designed to move personnel
31 and military functions away from populated areas towards more remote and more
32 secure bases, but in this case, we are bringing people into an urban environment, so
33 this doesn't follow the mold of any of the other BRAC plans. And the Navy needs to pay
34 greater heed to that and to the impacts and the needs created by this particular BRAC
35 action. The draft EIS understates the impacts of this BRAC and dismisses the
36 consequences of this BRAC on the surrounding community and, in fact, on the
37 community that serves the installation. In the short term, the EIS does not address
38 what's going to happen to the neighborhoods during the construction phase. In fact, the
39 EIS says there will be no impact on the neighborhoods during the construction phase,
40 which is pretty hard for us to fathom. This BRAC, again, unlike some of the other
41 BRAC's in Maryland, like Fort Meade or Aberdeen, this community doesn't reap an
42 economic development reward. Not that we're looking for one, but other communities
43 gain an economic development benefit from the BRAC, and therefore, the
44 improvements that they need to make under their infrastructures are regarded as an



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1 investment towards receiving that reward. In Bethesda's case, we're not reaping in that
2 economic development reward; we're not seeking one. But we are still being asked to
3 make that investment. It doesn't make sense. As has been stated before, these are
4 actions that are being foisted upon Montgomery County by the Department of Defense,
5 by the Navy, and then they're telling us, oh, by the way, you have to fix the problems
6 that this causes. Well, that doesn't make sense. There is a program available called the
7 Defense Access Roads Program which, in statute, it just says -- the Defense Access
8 Road Program says, the Department of Defense shall identify roads where a significant
9 increase in traffic has been caused by a defense action. And then there is a process to
10 analyze those roads and to apply federal funds towards the roads. There is no statutory
11 criteria that defines when a road is eligible for DAR funding. Now, the Defense
12 Department has written criteria that apply basically to rural roads; example, Fort Belvoir.
13 They are bringing thousands of military personnel there; huge impacts on a relatively
14 marginal road infrastructure; and so DAR funding has been applied to roads in that
15 area. Are they doubling the traffic? That's the Defense criteria. Very likely they are, but
16 that's in a rural area. You can't double the traffic on Maryland 355 or Jones Bridge
17 Road. It's physically impossible. However, this Defense action clearly, clearly will
18 increase traffic, and clearly will increase congestion on our neighborhoods; therefore --
19 and that's the criteria. That's the only statutory criteria is that there's a clear and
20 significant impact. Therefore, DAR funds should apply in this case. However, the draft
21 EIS clearly states, no we don't qualify for DAR funding. That's wrong. That's wrong.
22 That's a point we have to raise. That's the point that needs to be corrected. The draft
23 EIS needs to pay greater emphasize to transportation mitigations that we've already
24 discussed. I'm not going to repeat all of that again. The draft EIS does not, as, Ms.
25 Daniel pointed out, does not address very important housing issues. And these are
26 questions that the BRAC Committee has raised over and over again. We do know there
27 are outpatients. We do know there are outpatient families. Now I do -- I understand that
28 the Defense Department and the VA are working together to create a new system to
29 transition wounded warriors away from military facilities -- these military facilities and
30 move them to other facilities closer to home. But it's an issue that you cannot ignore in
31 the EIS -- in the final EIS. It really needs to address that situation. Tell us -- tell us
32 what's happening. The final EIS needs to spell out exactly how many employees are
33 coming to Bethesda. We've heard numbers 2200 to 2500, but we also know that the
34 deliberations to determine who's coming to Bethesda were tenuous, which is one of the
35 reasons the EIS took so long to get to us. We need to know exactly who those
36 employees are, how many of them are there going to be so we can make plans. The
37 draft EIS needs to more fully address the Homeland Security implications of this action.
38 We do have a partnership between NNMC, NIH and suburban hospital. What about
39 that? The implications of traffic and congestion in Bethesda would affect the operation
40 of that partnership, particularly during the time of a national emergency. So we really
41 need to address that. Traffic has to move, and it has to move, anyway. In an
42 emergency, it is even more essential that traffic move. So we need to address those.
43 There are many more things. You'll see that we're going to develop a coordinated
44 response. The Navy has been good to work with. I don't want to sound too bad about



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1 that, but we need more -- we should have had more information in the draft EIS, and we
2 have to ask for that, insist on it, that the final report is more comprehensive. Thank you.

3
4 President Knapp,
5 Thank you very much. So, Mr. Alperson, just for clarification for the Council, you have a
6 task force meeting this evening.

7
8 Phil Alperson,
9 Yes.

10
11 President Knapp,
12 And from there, you'll be putting -- you'll be approving these recommendations from the
13 task force and forward them to the County Executive for his review, or you've already
14 taken the task force recommendations to the County Executive, and not it's just through
15 the vetting process?

16
17 Phil Alperson,
18 We will finalize it tonight; forward it to the County Executive very soon. From that we'll
19 produce a draft letter back to the Navy for your review, and hopefully you can cosign
20 that.

21
22 President Knapp,
23 So do you expect that you'll be able to have a letter back to us for next week, or at least
24 a draft letter?

25
26 Phil Alperson,
27 Hopefully by the end of this week.

28
29 President Knapp,
30 Okay. I just -- for ground rules for my colleagues, I thank Mr. Oliveria for participating. It
31 is still the public comment period, so I think you're here more for the clarification of any
32 process questions as much as anything as opposed to actual content of the EIS itself.
33 Since that's what we're all formulating. So I thank you for that and I just wanted to share
34 that with folks. And I just wanted to state that, you know, I think that it is our
35 commitment, and I think the reason that everyone has the issues that we do is we
36 recognize the need to create a real world class resource for our military and their
37 families, not just inside the fence but outside the fence, and to make sure that we've got
38 the pieces in place to accomplish that successfully. And so I thank -- I appreciate the
39 spirit with which -- in which you came today, and it is my hope that what we formulate
40 actually gets us to that outcome, and we look forward to continue to work with the Navy
41 and the federal government to achieve that desired outcome. So with that, I turn
42 Councilmember Berliner in whose district this resides.

43
44 Councilmember Berliner,



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1 Thank you, Council President. And I've been honored to serve on the task force as the
2 Council's representative. And I would like to begin by commending the County
3 Executive, Dr. Hanson and General Holmes. I believe that this is a process that has
4 worked. I believe that the community has felt -- heard. I believe that we have
5 incorporated to a very large extent their concerns, and I feel like we are, notwithstanding
6 the Navy having rejected our suggestion for an additional 45 days to respond to this, I
7 believe that the County will be in a position to file comments that underscore what I
8 think this side of the table and that side of your table believes to be an inadequate
9 DEIS. And I say that to you, sir, with the greatest respect. I think you hear that we do
10 believe it is an inadequate document, and that are -- certainly our hope and our
11 expectation is that when the final EIS comes out that it will be reflective of that which
12 your community, you're neighbors and people who do seek to embrace this project with
13 the most warmth feel like you have done your share to respond to the increased burden
14 on the rest of the community's lives as a result of doing this. I want to get back to a point
15 that Mr. Alperson raised with us, because it's something I feel very strongly about. And
16 we have in attendance the wonderful representative of -- our Congressman Chris Van
17 Hollen, Jim Kleinman, and we need to know whether or not we need some statutory
18 modification, because I simply don't get how the defense access roads is not applicable
19 here, or how you don't have the discretion to make it applicable here. So I would like
20 some clarification, if possible, sir, as to whether or not you perceive you are precluded
21 by your regulations from recognizing the very distinct difference between where this
22 program has typically been applied and the intensely urban area that this project is
23 going in, because doubling of roads is simply, as Mr. Alperson I think appropriately
24 pointed out, is an impossibility. We're not talking about a doubling traffic. We already
25 have a traffic nightmare that is going to be made incredibly worse. So are you in a
26 position to advise us as to whether or not you perceive that you are absolutely
27 constrained and have no discretion, because if so, we need to address that.

28
29 David Oliveria,

30 [Inaudible] or not in a position to advise you, but I will tell you that this issue has arisen
31 almost from the first day that -- actually the before a draft EIS was ever published. It is
32 in the public comment record that I continue to review, which is being briefed up to the
33 Secretary of the Navy and to the Department Secretary of Defense. It is an issue that
34 was being considered, addressed, will have to be considered more once we have all the
35 public comments in. We're very anxious to get our hands on the public comments. It is
36 your process. It's recognized as a public process, and we need to make sure we protect
37 that, both in the spirit and the legality of it, so we are anxious to get your comments and
38 the deal with them in the time that we have to get the final EIS out.

39
40 Councilmember Berliner,

41 I appreciate that, and as an administrative lawyer, I appreciate the constraints under
42 which you are operating. I will say to you, as I've conveyed to Mr. Alperson, that, from
43 my perspective, the first point that I hope we are making in these process is that we
44 believe that the federal government needs to stand up to its financial obligation here,



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1 and that that obligation extends beyond the campus, and it extends in a manner that
2 would relieve this County of having to take on what, I believe to be, your responsibility.
3 And we're not in a position to take on that. So the question is going to be either not you
4 step up, and I believe you have the discretion, and if you don't have the discretion, my
5 hope is that we will address that in the appropriate manner. But I urge you to take a
6 look, I urge you to convey to your senior -- the chain of command that this is a very
7 important issue. We're talking about something that is \$70 million plus, and we don't
8 have it, the state of Maryland doesn't have it. And it is fundamentally your responsibility.
9 I won't go on, President. I know that we've got a lot of folks who want to speak to this. I
10 would commend again the County's statements here today, because I believe they do
11 suggest that we are going to deal with the metro issue, we are going to deal with shuttle
12 buses, we are going to deal with a traffic management plan that has teeth, not just a
13 maybe. We're going to deal with, in our comments, the gaps that exist in this Draft
14 Environmental Impact Statement. So I feel confident that we will make our best
15 showing, and I feel confident that with the legislative support that we have that we will
16 do what else is required to ensure that the people of Bethesda are, in fact, spared an
17 undue burden as a function of this wonderful project. Thank you.

18
19 President Knapp,
20 Thank you. Councilmember Leventhal?

21
22 Councilmember Leventhal,
23 Thank you, Mr. President. I agree with everything that Mr. Berliner has said. I want to
24 thank Mr. Oliveria for being here, and we do recognize that it is a national imperative to
25 provide the very best care to injured soldiers. So we all share in that goal and we want
26 to support the Defense Department and the Navy, and the Army, and all branches of the
27 military service in providing the very best care. And we're not losing sight of that even as
28 we express very real concerns about local impact. We do acknowledge that it is
29 absolutely necessary to bring that care into the 21st century and provide the very, very
30 best medical care. And I want to thank Phil Alperson who is coordinating this effort on
31 behalf of the County Executive, and really on our behalf, too, although he works directly
32 for the County Executive. I appreciate that he's going to pull together a coordinated
33 response and offer the County Council our chance so that Montgomery County speaks
34 with a single voice. And I have some comments on that, but I appreciate that that is in
35 the works. I did want to just comment in response to Mr. Alperson's remarks that he said
36 we didn't ask for this as an economic benefit, unlike some other communities that hope
37 for more military installations because they see that as a good thing for them. It is true
38 that the Bethesda community didn't say give us more at the Navy hospital. Having said
39 that, I also acknowledge that there is an upside benefit to having more activity that it
40 will, you know, we -- wasn't very long ago we were talking about how the Woodmont
41 Triangle could, you know, benefit from more people eating lunch and dinner and
42 shopping, and we're looking at a white fund sector plan, as Chairman Hanson
43 acknowledged. And so, you know, there is an upside to this, and I don't want the Navy
44 to come away thinking, boy, this community doesn't appreciate a good thing when it's



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1 handed one. We know it's a good thing, but we do have to deal with the traffic impacts,
2 and we need help from the feds to do that. And let me acknowledge -- we acknowledge
3 Joan Kleinman, our good friend; let me acknowledge our good friend Sue Tayback who
4 is here from Senator Mikulski office as well. And I think it's very significant that Senator
5 Mikulski and Congressman Van Hollen have both sent their staff here, because we
6 need their help and our constituents are their bosses constituents, and we really do
7 need help. Chairman Hanson, you don't hear this from me all the time so let me be very
8 clear for the record, Park and Planning has done a really good job. I think the comments
9 are very thorough, right on point, very, very helpful. Let me just react to a of couple
10 things. East Metro entrance, yes, yes, yes, we need that. Great idea. Defense access
11 roads, money from the feds; yes, more than anything else, we need that, not only for
12 roads but for transit. Both roads and transit are going to be necessary to solve this
13 problem. Let me talk about the issue that hasn't been raised here, and it is addressed in
14 the report, and that's the Purple Line. We need east-west transit. Chairman Hanson
15 talked about the housing issues and the lodging issues, and you know, the folks that live
16 near Walter Reed, which is in -- near where Mr. Elrich and Ms. Ervin and I live, you
17 know, don't have to travel too far to get to the Navy Hospital, okay, that's true; but if we
18 had east-west transit, it sure would make that easier. And let me also say this about the
19 Purple Line, and I want to be very clear about this. I've been, as all of us have, in close
20 contact with the Maryland Transit Administration, and they are running the rider-ship
21 numbers. And as our friends from Capitol Hill know we won't get a Purple Line; we won't
22 get approval from the federal government unless the rider-ship justifies the federal
23 investment. And the rider-ship for a Purple Line with a terminus in downtown Bethesda
24 under any circumstances, even post-BRAC, very clearly from the Maryland Transit
25 Administration's estimates is much higher than the rider-ship for a transit where the
26 terminus is medical center. So we have to have the Purple Line. We have to have the
27 Purple Line connect from Bethesda to Silver Spring. BRAC increases the justification
28 and the need for the Purple Line. It does not call for relocating the Purple Line north to
29 medical center or having the terminus at medical center. That's not wise. That would
30 decrease rider-ship from having the terminus of the Purple Line in Bethesda. And my
31 hope is that if the County speaks with one voice, which I understand Mr. Alperson is
32 going to pull together, that we will not use this very, very important communication to
33 the Navy as an opportunity for some side agendas. And I just to, you know, I've read
34 this, and I noted that there are some excellent community volunteers who have
35 participated in this committee. There's language in the draft statement from the
36 committee -- your BRAC Committee, Mr. Alperson, that says that committee members
37 had different views about the Purple Line. Well that may be, but the County Council
38 doesn't have different views about the Purple Line. And I hope we don't use this report
39 to the Navy as an opportunity to promote a variety of alternatives regarding the Purple
40 Line that are not actually even being studied like heavy rail by the Maryland Transit
41 Administration. That's not on the table. Maryland Transit Administration is not looking at
42 heavy rail. So for those who really don't want the Purple Line to be built, the relocation
43 of these jobs and these soldiers and these families from Walter Reed to Navy Hospital
44 makes the Purple Line more needed than ever. We should not use this as an



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1 opportunity to try to derail the Purple Line. And I hope that the County's communication
2 won't in effect do that. The last thing I wanted to say was Mr. Berliner said that he
3 thought that the process that Mr. Alperson had managed, and Park and Planning, and
4 DPWT, and everyone else that participated, was excellent, and I agree. And he thought
5 that the community had felt it was heard, and I hope that's true. The problem is that we
6 often find ourselves in dealing with the federal government in a situation where we
7 pretend that we're here to listen, but we have no influence over the result. And I hope
8 that's not the case. So if the community had the opportunity to speak to you, Roger, or
9 to us, or to Park and Planning, or to DPWT, we could listen all day long. We're really
10 good at listening. But ultimately it's the Defense Department that's going to make the
11 decision. And so when you say the community felt it was heard, I hope that's true. The
12 question is will the community be heard by the Defense Department, who ultimately is
13 going to make this decision.

14
15 President Knapp,

16 Thank you, Councilmember Leventhal. And I apologize for not recognizing Senator
17 Mikulski and Congressman Van Hollen's folks here earlier. Also I would like to recognize
18 John Carmen, who is chairing the task force, and thank you for your efforts as well.

19
20 Councilmember Leventhal,

21 Thank you, John. I meant to acknowledge you as well.

22
23 President Knapp,

24 Councilmember Elrich.

25
26 Councilmember Elrich,

27 I may be the least favorably disposed to this, but I'm one of those people, frankly, who
28 thought the work should have been done at the existing site at Walter Reed, and then I
29 regret the movement of this project to Bethesda. And I'm not somebody who believes
30 that 355 has an infinite capacity to add capacity; that this project and the projects the
31 people are talking about at White Flint and beyond, and the projects people were talking
32 about at Woodmont; they are unmanageable in some. And I cannot imagine any kind of
33 improvements that are going to be done to 355 that will allow the development of all
34 those things to their full potential. And so if I had to pick and choose as to what I wanted
35 to have done there, I'd rather have, you know, to the extent it can be managed, tax
36 paying property developed in Bethesda rather than using up precious capacity on the
37 expansion of this site. I fully agree with the mission of providing first class medical care
38 to the people who are being sacrificed and apparently plan on being sacrificed for
39 another 10 years or 20 years, whatever. And I think that's a necessary thing to do to
40 take care of them. Not to sacrifice them. But at the same time, I don't think this is a
41 particularly wise decision, and I wish there was a way of revisiting it. But not being able
42 to revisit it, and I'm well familiar with the Walter Reed facility. And the questions I have,
43 and I don't see answers in here, and maybe Roger has been part of a larger discussion,
44 is how does this function different than Walter Reed? You know, for example, we talk



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1 about the need for visitors, but there's that one dinky little hotel across from the
2 entrance of Walter Reed and there's not a lot of hotels that provide capacity for visitors
3 at the current Walter Reed facility, except for what might be on campus. And I guess the
4 question is how does the operation of this site going to play out differently than the
5 operation of the Walter Reed site? Also, who did -- Walter Reed is terribly served by
6 transportation, and so driving is something you almost have to do to get to Walter Reed
7 facility. Without knowing where current employees live, we may well be in a situation de
8 facto that you can get -- that you might get better performance on transit, because this
9 is at least on the Red Line, than you would get out of the existing Walter Reed facility.
10 And I guess I'm wondering, you know, have we analyzed what the pattern of where
11 people live are, what the opportunities for current employees of Walter Reed so we
12 have some realistic expectation, or at least can talk about what's real -- what the
13 realistic expectation is for people who will be coming to this facility. And really to think
14 about what will make -- how much different this will be than the operation of the facility
15 on Georgia Avenue. Like I said, I don't see this in here, but I would certainly be
16 interested in, you know, getting some -- some of hearing or some discussion or getting
17 some information on why we'd expect or what kind of magnitude of change you would
18 expect at this facility compared to Walter Reed, and why you would expect that
19 magnitude of change. And you don't have to answer my rhetorical question about the
20 silly war.

21
22 President Knapp,
23 Thank you. Councilmember Floreen.

24
25 Councilmember Floreen,
26 Thank you. I share the comments that my colleagues have made about absolute
27 commitment to providing first class medical care for our service people and support the
28 initiative, but with all of that does come a significant responsibility. So I had a few
29 procedural questions about how this is going to work and the analysis that has occurred
30 so far. Mr. Hanson, has the Planning Board looked -- applied to this the kinds of tests
31 that it would apply to a private project under our current rules that just changed?

32
33 Royce Hanson,
34 Well, we would expect -- .

35
36 Councilmember Floreen,
37 I know they're technically exempt, so putting that to one side.

38
39 Royce Hanson,
40 The general answer is yes. But to do that, we also have to have specific information -- .

41
42 Councilmember Floreen,
43 We don't have all that details yet.



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1 Royce Hanson,
2 That we do not yet have. This is one of the reasons that we're requesting -- indeed, we
3 think law requires, that the specific plans for development of the campus come back to
4 us under mandatory referral.

5
6 Councilmember Floreen,
7 And under that process, you would apply, at least in your analysis and your
8 recommendations, all the growth policy rules and whatnot that the Council has
9 endorsed.

10
11 Royce Hanson,
12 That's correct.

13
14 Councilmember Floreen,
15 And that guide your decision-making. Because I would like in our communication to the
16 Department of Defense on this that we ask for their commitment to provide us with a
17 responsibility that goes with this really important initiative to adhere -- to agree to adhere
18 to the recommendations that come out through the mandatory referral process. I know
19 it's not required. This is a conversation, and I appreciate that. But given, you know, the
20 unique location of this particular facility and the concern that every last one of us has
21 about the ability for these poor patients and their families simply to get to see the doctor
22 at certain times of the day, we know it is currently an untenable situation. It is a priority
23 for us already. This is going to make it untenable for the very people that we're trying to
24 serve here. So I think that it is within the scope of the Department of Defense's initiative
25 here to make it possible for the servicemen and their families to get -- and the staff to
26 get in and to get out in a way that meets County standards as well as federal ones. So I
27 would ask that we request in our final communiqué on this subject that we get an
28 agreement from the Department of Defense to make -- agree to adhere to these
29 recommendations, and to make these things happen. If we can spend this money on
30 the war, it seems to me we can spend this money on the people we're bringing back in
31 such damaged condition. I would also like to request, and I read this somewhere in the
32 papers. I'm not sure whether the Federal Construction Initiatives need to comply with
33 county building codes. Do they? Well, whether or not -- if we could also ask that those
34 issues be part of our request as we work through this. I do think there is a lot of work
35 we're doing right now in a variety of areas, and to have this many employees, this much
36 construction in an already burdened -- an area burdened by so many environmental
37 challenges in one fell swoop, this project could undercut all the other initiatives that are
38 occurring within this -- this portion of the county if we don't get some concurrence and
39 buy-in by the Department of Defense. So as we move forward to some letter of
40 concurrence between the different participating parties, I would ask that we include
41 those elements in our conversation and our request. I think that's the very least we can
42 do.

43
44 President Knapp,



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1 Thank you. Councilmember Praisner, and then one final question by Councilmember
2 Berliner. I just heard my colleagues; we've got about -- three or four minutes. We've got
3 to try and get to our budget discussion -- another significant discussion. We had a pretty
4 crowded morning so I appreciate that.

5
6 Councilmember Praisner,
7 I'll be very brief. I just want to add my compliments as well to the coordinated effort
8 among the agencies and thank Councilmember Berliner for stepping forward and
9 participating. We had conversations last year. The PHED Committee has been tracking
10 and monitoring this issue, and we will continue to do so for the Council. There are broad
11 issues across all parts of the County that relate to BRAC processes and base
12 realignments. This one has had -- the BRAC process has had -- through no fault of
13 anyone here, much higher up the food chain an element associated with it that appears
14 inconsistent with the overall philosophy of BRAC,; namely consolidation. Maybe not the
15 Walter Reed, but I tend to agree with Councilmember Elrich about the Walter Reed
16 closure and realignment. But certainly our colleagues in Virginia dealing with the
17 movement of folks from perfectly adequate, even more than adequate facilities in
18 Arlington with public transportation to -- for Belvoir and elsewhere, make no sense at all.
19 And if Homeland Security is the rationale for that then all of Washington, D. C. would
20 need to be relocated today. So it just -- we can take Homeland Security to its absurd,
21 and I think this does it in some ways. There are many parts of the County that deal with
22 a federal presence and the challenges of having a federal presence, whether it is list up
23 county and the impacts, or the Food and Drug Administration on the east side of the
24 County, which was actually a base closure with a, uh, initiative by the government when
25 they decided not to put FDA up to 70 to consolidate all the rental sites and bring them
26 there. But my experience with federal presence and the FDA consolidation has been
27 less than ideal related to a variety of issues, including traffic and neighborhood impacts.
28 So I think -- in fact, I do have an outstanding question as relates to FDA which is
29 consistent with Councilmember Floreen's, and I think it's something that I know you
30 don't have the information yet, Mr. Hanson, but something that we need to know in
31 every federal presence; if it were a private developer, what would the requirements be?
32 And what would the timetable be? And what would the infrastructure needs be? And
33 what is the impact on the neighborhoods? I think those questions, and the parking
34 space ratio challenges, which the National Capital Region changed for certain areas,
35 and the need to conform to mandatory referral on all cases at all times are things that I
36 think we need to carry forward as we deal with this issue. And I know that we have
37 pushed for more time for the community to comment. I hope that as you look at that,
38 Phil, and others, the question of yes, the community has commented, but if there are
39 reviews and time periods that challenge the community, I hope we will continue to raise
40 them. Thank you.

41
42 President Knapp,
43 Ms. Praisner. Mr. Berliner.



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1 Councilmember Berliner,

2 Just a couple final thoughts, and thank you for the opportunity in our colloquy with
3 Councilmember Leventhal with respect to the extent to which the community has been
4 heard. I would share with my colleagues that yesterday we got a memorandum from six
5 community organizations and the Stone Ridge School in which it identified its nine
6 priorities. And unless I misheard, almost every one of those priorities were reflected in
7 what we heard back from Dr. Hanson or General Holmes in terms of the priorities that
8 we are going to be seeking here, including -- and I appreciate, General Holmes, you're
9 observation with respect to a new exit from I495 and looking at that very seriously as a
10 dedicated entrance for this facility to eliminate the use of 355 for that purpose or to
11 greatly reduce it, and that that's a critically important issue for the community. So I
12 appreciate that that's something that the County is going to be advocating for in its
13 submission that is we will get a draft of in time to comment back on. So I just wanted to
14 say, Councilmember Leventhal, you're absolutely right that it is critical that our
15 community be heard in terms of formulating our position, but it is actually essential that
16 the Defense Department hears it and responds favorably to it when it makes its
17 decision. So we will leave you with that thought, good sir.

18
19 President Knapp,

20 And I would just, again, thank all of you, thank you Mr. Oliveria for coming. But also
21 thank everyone who's working together. This is truly an effort that is going to require all
22 of us working in concert with one another from our federal representatives all the way
23 down to our neighborhood civic associations. And so I appreciate everyone's efforts to
24 date. I would just add one comment in addition to Mr. Leventhal's comments as it
25 relates to the Purple Line. Clearly the assumed east-west flow is there. I was struck by
26 given some of the information that Mr. Alperson put on the BRAC website that many of
27 the employees were currently traveling to Walter Reed and will then move over to Navy
28 Medical are also actually up and down the 270 corridor. Thereby justifying not just the
29 Purple Line but also continued investment in the corridor cities as well. I was surprised
30 by that. So if you look at where it's coming from, there are a lot of folks up on that 270
31 corridor. So I think it is both going to be roads and continued focus on transit that's
32 going to help resolve these issues, as we all know. So with that I thank you all very
33 much. I look forward to many of you coming back next Tuesday as we try to resolve
34 what our final message is to Mr. Oliveria and to his colleagues, and to the federal
35 government. Thank you very much, sir. Thank you everyone. Okay. Our final agenda
36 item for the morning is the FY08 Budget Savings Plan. We'll give just a second for the
37 BRAC folks to clear so the budget folks can move in. Okay. As I believe everyone is
38 aware, we are facing a -- a difficult budget year. Current protections in our fiscal plan --
39 our six-year fiscal plan would indicate that at this point in time, we are looking at a
40 nearly \$400 million gap between projected revenue and projected expenditures. In an
41 effort to address that the County Executive has provided to the Council, on December
42 21st, a list of recommended reductions, FY08 and FY budget totaling 23.7 million. We
43 also have received reductions from MCPS Montgomery County Public Schools, totaling
44 10.2 million; \$2 million from the college; 1.9 million from Park and Planning, for a total of



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1 \$37.8 million that we have before us. It would -- been my hope at one point that we
2 would be able to try and work through this today. In talking to go my colleagues, it is my
3 expectation that given that the questions that people have in spite of the information we
4 received from the Executive Branch, will require us to get some more specifics out on
5 the table and get some clarity that -- so it is my hope that today we will get individual
6 Councilmembers to indicate areas where they may have concerns with some of the cost
7 reductions that have been recommended by the County Executives; also to identify
8 some potential alternatives that I think some Councilmembers have and to be able to
9 identify those. And so ideally to identify potential cost reductions people have concerns
10 with, identify alternatives, some basic general information, and it is then my hope that
11 we will give some time to the Executive Branch to give information back to us during the
12 course of the next couple days; and then that the Council will take action next Tuesday
13 on a final plan. So with that, I will turn it to Mr. Farber -- just one second. I wanted to
14 thank Mr. Beach for his efforts and for that of the County Executive to recognize that we
15 are facing a difficult fiscal situation and for the efforts that you've taken in putting this
16 information together, and also in responding to the many questions that the Council
17 provided to you. I know we had an array of questions in many areas, and I think that the
18 time that clearly you and your team have taken to get those responses back we
19 appreciate. Of course, questions tend to beget more questions, and so I think we'll have
20 a few more. But I thank you all for your efforts, and I thank all of you in the room who
21 have contributed in some way, shape or form in putting this information together, and to
22 the reductions that many of you will likely end up taking recognizing the important
23 situation that we're all facing as well. So with that, I turn it over to Mr. Farber for some
24 quick background.

25
26 Steve Farber,

27 Thank you, Mr. Knapp. As you indicated, OMB Director Joe Beach is with us and Alex
28 Espinoza who is the Operating Budget Coordinator. We are also joined by a number of
29 other folks who are key players in this savings plan; Chief Carr and General Holmes, I
30 believe, Director Uma Ahluwalia, Chairman Hanson and others, who are going to be
31 able to answer the Council's questions. Over the years, the County has in fact used
32 saving plans on a number of occasions. In the early 90's, when things were very tough,
33 they were repeatedly used. And I recall that Mr. Duncan, when he took office in
34 December of 1994, as one of his first acts actually called for a savings plan in what was
35 then fiscal '95. We've had them, obviously, when revenue growth doesn't keep up with
36 expenditure growth. And that's the phenomenon we confront now. That is one of the
37 major contributing factors to the projected \$400 million gap. The Executive, as you said,
38 Mr. Knapp, has proposed a savings plan. His original goal was \$64.1 million, which was
39 about 2% for all agencies. What you have before you is \$37.8 million in proposed
40 savings from the agencies; and the packet contains the transmittals from the County
41 Government, from MCPS, from the college and from Park and Planning. The -- a very
42 instructive savings plan from the past to look at is on page 2 of my packet. This was the
43 FY04 savings plan, which had many similarities. And basically, as you can see, on page
44 2, the Council did approve most of that savings plan, but there were areas that are



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1 similar to the questions raised right now, in which the Council did not approve proposed
2 reductions. One was in Fire and Rescue for the de-staffing of a fire engine. And then as
3 you can see on the bottom of page 2, there were several proposals in Health and
4 Human Services, also in Fire and Rescue and transit related that the Council declined
5 to approve. They totaled \$1.4 million out of that savings plan. We did get extensive
6 answers back from the County Government to the range of questions that
7 Councilmembers had posed. And we also have had, as I said, submittals from the other
8 agencies. The MCPS savings plan in particular, of course, is more limited than had
9 been projected by the Executive because we're at mid-year and 90% of the MCPS
10 budget is in compensation. The college savings plan is already underway. And as far as
11 Park and Planning is concerned, Chairman Hanson may want to speak to that, the
12 target 2% has been met, 1.9 million, but there are some questions about some
13 supplementals that were discussed last May during budget season. When we hear the
14 comments today from Councilmembers, as you said, Mr. Knapp, we'll be in a position
15 with help from our colleagues in the agencies to answer final questions and prepare a
16 resolution for approval next week.

17
18 President Knapp,

19 Great. Thank you very much. I look to colleagues for any questions that you might have
20 at this point in time. There we go. Mrs. Praisner.

21
22 Councilmember Praisner,

23 Well, I'll start the ball, but I'm sure that others will jump in, and that might activate
24 another question. I guess the overall comment I would make is somewhat similar to the
25 comment I made yesterday when the Council was on retreat. I think too much of the
26 savings relies on lapse; either new lapse or the lapse that was already achieved by
27 virtue of some actions that were taken in the budget. And we are, in essence, going
28 through a savings plan to prepare for a very difficult budget that is going to come and to
29 try to cushion that process by having additional resources available for the next budget.
30 Unless we rigorously review those positions which were lapsing, we're just postponing
31 it. It's not raining today so it's manana as far as the hole in the roof. But the hole in the
32 roof continues to exist if we don't look at specific positions. And the variety of elements
33 associated with that. The comments I also made yesterday are -- relate to a couple of
34 specific questions as far as individual initiatives like the Kids Ride Free Program, which I
35 assume is revenue associated with Metro, not really with Ride On as we've had this
36 conversation. And the question about the State's increased contributions to Metro and
37 our systems raises questions about whether we need to do this. I personally don't want
38 to. I think it encourages the kind of participation that we need in public transportation.
39 The one issue that I would suggest for the following budget, though, is I did ask some
40 more extensive questions about the relationship between the Kids Ride Free Program
41 and the school's transportation system, and if there are some additional options that can
42 be explored. The answer to the questions that I asked makes reference to the, I think,
43 \$10 pass or coupons that youth can acquire, and the question is how many are doing
44 that. And can we encourage that on a broader sense. I'm also concerned about the Ride



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1 On issues, and believe we need to look at those as well. But on overall from a
2 standpoint of new programs or contracts that have not been extended as yet, the
3 question has to be asked what the timetable would even be to implement a contract that
4 hasn't been activated already from this current fiscal year. So from an overall point of
5 view, I am disappointed that there is so much of a reliance on lapse, and so little focus
6 on the restructuring of programs overall.

7
8 Joe Beach,

9 Just very briefly. The reason that so much was lapsed was those were savings that
10 could be identified and implemented rather quickly, and in most cases, not all, would
11 have a less of a service impact. And I think if you look at our gap, it is a long-term
12 problem in the FY budget. We want to look at it that way more permanent solutions, but
13 for the mid-year reductions, we focused on what we could identify and implement
14 quickly.

15
16 President Knapp,

17 Okay. Councilmember Andrews -- Council Vice President Andrews?

18
19 Vice President Andrews,

20 Thank you, Council President Knapp. Well, I first want to commend the County
21 Executive for initiating the process of a mid-year savings plan. I think it's recognition by
22 the County Executive Leggett that we're in a serious situation that we need to get
23 started. I think it is only the first step in what needs to be a balanced and
24 comprehensive approach to addressing the projected \$400 million budget gap. And I
25 think that in fiscal year 09, we need to look at a number of options, including the amount
26 of money that's in salaries and benefits, which is 80% of our operating budgets. I think
27 we have to address that part of it as well. But I'll confine my comments to this savings
28 plan, because I think that it has many reasonable proposals, and I support most of
29 them. I do want to note that the proposed reductions that have been offered up by the
30 Public Safety agencies total \$6.8 million. Police came up with 2 million; Corrections
31 583,000; 86,000 from the State's Attorney; 146,000 Sheriff; 200,000 for the Circuit
32 Court; and Fire and Rescue put forward \$3.8 million in proposed savings or cuts. I am
33 going to support almost all of those proposals, although with some reluctance. But there
34 are three that I'm not going to support, and I'll list them now, and those are the three
35 reductions to capacity for emergency response. They're listed on circle 23. It's S14,
36 S15, and S16. S14 would reduce EMS over time by transferring EMS resources from
37 Glen Echo and Laytonsville to Gaithersburg and Kensington, and it describes the likely
38 result depending on the volunteer staffing, is increased emergency service response
39 time in Glen Echo and Laytonsville. S15 would reduce by de-staffing Germantown
40 rescue squad and increasing rescue truck staffing by one. It describes it as saying
41 absent adequate volunteer staffing; there would be an increase in the time it would take
42 for a full complement to arrive on the scene of serious collisions and building fires. And
43 then S16 would take a Hillandale truck 712 out of service. It says this would increase
44 fire suppression response time in Hillandale area in situations where a lighter truck is



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1 needed it would have to be provided by another station. The total of those three
2 reductions is 2.1 million, and so at the appropriate time I will suggest that we not agree
3 with those proposals, which are about 2.1 of the 3.8 million that is recommended to buy
4 for cuts in Fire and Rescue. So I wanted to say that I don't think the County should go in
5 the direction of reducing response time. One of our goals has been to address what has
6 been unsatisfactory emergency response time in some situations. And I think that there
7 is no more important public responsibility than emergency response. So I think that we
8 need to not support those cuts, and I'll make a motion at the appropriate time to do that,
9 and thank you.

10
11 President Knapp,
12 Thank you. Councilmember Floreen.

13
14 Councilmember Floreen,
15 Thank you. We had started in our retreat yesterday in our preliminary conversation
16 about some of the details here. I have a carryover question that we were sort of puzzled
17 over and perhaps you can help us with it, Joe. On circle C of Mr. Farber's packet is your
18 -- the County's recommended Public Services Program described in the fiscal plan
19 summary. Looks like this. C. For some reason -- we've given up on numbers,
20 apparently. Going with the alphabet. The tip of the beginning there. And this is my
21 question: on line 2 you show a beginning reserve for fiscal 08 basically in the top box.
22 You're showing that between the reserve and revenues and so forth, we're pretty much
23 on target in terms of the appropriated budget and the estimated resources available to
24 support that. Right, Joe?

25
26 Joe Beach,
27 Right.

28
29 Councilmember Floreen,
30 The 3.4 billion of what was appropriated and you are looking now at 3.4 estimated as of
31 this point in time. And then my question had to do with the reserve line, line 3, the
32 beginning reserves undesignated; 175.8 is what we assumed in the budget -- was in the
33 budget we approved. Right now it has gone up to 271 for some reason. And then in --
34 for 09 it goes way down to 94 million. So there is 180 million or so difference in the
35 numbers. And we could put together -- trace some of that, but we're not sure about
36 where all of that money was going. Now, perhaps you could get back to us with a better
37 explanation or perhaps you know that off the top of your head. Yeah.

38
39 President Knapp,
40 Go ahead. Joe, turn on your microphone please.

41
42 Joe Beach,



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1 I apologize. Ok. When the Council approved the FY08 budget, we had an assumption
2 that we would have resources carried over from FY07, that's line 3 on that page, of
3 about 175.8 million.

4
5 President Knapp,
6 Right.

7
8 Joe Beach,

9 We were presuming to draw about 86.2 million to fund the FY08 budget, so that would
10 draw down those reserves during the year still meeting the 6% level. Revenues as well
11 as reserves are a source to fund the Operating Budget.

12
13 Councilmember Floreen,
14 Sure.

15
16 Joe Beach,

17 What happened -- our actual experience in ending FY07 was from a combination of
18 under-spending across the four agencies, as well as additional revenues; we ended up
19 with a higher beginning fund balance for FY08 than we had projected. That would be
20 the next column over and estimated the 271 about \$95 million. Because of
21 supplemental appropriations either approved or projected during FY08 of approximately
22 28 million plus revenue losses that brings the reserves down to -- go over a couple of
23 columns to the 94.6 million.

24
25 Councilmember Floreen,
26 So it's what -- you're saying then that it's about a \$70 million decrease in revenue for
27 this year?

28
29 Joe Beach,
30 For FY08 yes in just revenues on line 2, our revenues are projected to decline from
31 what we had projected by about \$78 million.

32
33 Councilmember Floreen,
34 And -- okay. And that's -- okay. And so that's the difference in the revenue line?

35
36 Joe Beach,
37 Right.

38
39 Councilmember Floreen,
40 You're using to back -- okay, thank you. Now like Mr. Andrews, I have a couple of --
41 especially significant pet peeves on all of this. Mr. Holmes, maybe you could come on
42 up? I think Mrs. Praisner -- .

43
44 Councilmember Praisner,



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1 There's nothing exciting behind the door.

2
3 Councilmember Floreen,
4 Identified one of them as well; the Kids Ride Free Program, and the Call and Ride -- the
5 proposal to freeze the Call and Ride Program. I'm prepared to move to retain those
6 programs, and I would welcome if you have a better solution to propose. We're certainly
7 open to your advice. Mr. Orlin, of course, has taken a peek at this and has his own view
8 of things that might be employed. But it would be beneficial to hear from the department
9 as to an approach that might be taken here.

10
11 Councilmember Leventhal,
12 I have an parliamentary inquiry.

13
14 Councilmember Floreen,
15 Between the time this was announced and today, we have had no time for conversation.
16 So, I would like to place that on the table and, I guess, solicit your response by -- in the
17 next couple days. Is that the best way to handle this?

18
19 President Knapp,
20 So you have a specific -- you've got the proposal?

21
22 Councilmember Floreen,
23 It's the Kids Ride Free Program, and the proposal to reduce the Call 'N Ride -- to freeze
24 the Call 'N Ride Program.

25
26 President Knapp,
27 All right, Ms. Floreen.

28
29 Councilmember Leventhal,
30 Parliamentary inquiry, Mr. President. I don't actually understand, unless I missed it. I did
31 take a phone call -- that anything is before the Council at this moment. That is -- if so --
32 it doesn't sound to me as though it's in order right now to move -- .

33
34 President Knapp,
35 Right.

36
37 Councilmember Leventhal,
38 To modify -- .

39
40 Councilmember Floreen,
41 No, I'm just -- .

42
43 Councilmember Leventhal,



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1 If I could complete my parliamentary inquiry. If the Council President would tell me if I
2 am right or wrong. It doesn't sound to me as though it is in order at the moment to move
3 to modify any aspect of the savings plan since no one has actually moved the savings
4 program - .

5
6 President Knapp,
7 That's correct.

8
9 Councilmember Leventhal,
10 Nor has it been reported to us by a committee. So, we're gathering information about
11 the savings plan, but until such time as, I mean, a motion could be made, I guess, to
12 delete funds from the budget, but the only thing we're operating on right now is the
13 budget. And then we would have to move those items of the savings plan that we want
14 to cut from the budget. If there's anything that we don't want to cut from the budget, it
15 doesn't require a motion because it's in the budget, and it doesn't require a motion.

16
17 President Knapp,
18 That's correct. So there are no motions. At this point it is getting information and to the
19 extent as though Mr. -- as Mr. Andrews just identified things that he was not necessarily
20 comfortable with what has been proposed by the County Executive. So the extent that
21 there is a request to get more information from the department that -- that what I believe
22 Ms. Floreen is trying to state.

23
24 Councilmember Floreen,
25 And those are the two areas in particular.

26
27 President Knapp,
28 Okay.

29
30 Councilmember Floreen,
31 That I'd like your response on. Thanks.

32
33 President Knapp,
34 Okay, thank you. Councilmember Ervin.

35
36 Councilmember Ervin,
37 Thank you. There are a few items that I am very uncomfortable with as well. And I want
38 to start by asking a question really. And that has to do with how often do we under-
39 spend our budget and by what percent?

40
41 Joe Beach,
42 If you go to circle page 30, right under the first section, we have some information on
43 under-spending in [inaudible] year [inaudible]. Excuse me. What that indicates under
44 number 1 is in FY07 under-spending was approximately 21.7 or 1.8% of appropriations;



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1 '06 much less, about 5.5 or 0.5%; '05 16.4, and you can read on there. So there's a
2 different reason in each year for that to occur. But that just to give you some idea of
3 what it has been in the past.

4
5 Council Staff Director Farber,
6 Joe, excuse me, that's just for County Government though; isn't it.

7
8 Joe Beach,
9 Yes, sir, just County Government.

10
11 Council Staff Director Farber,
12 Right. So for example, in '07 for all agencies combined, what would the number be?

13
14 Joe Beach,
15 I don't have that information. I'd have to get back to the Council with that information.

16
17 Councilmember Ervin,
18 Okay, let me just continue real quickly here, and that is my biggest concern are cuts to
19 direct services, especially among the most vulnerable of our community. And I want to
20 start with the delay of the implementation of the community-based pre-K services. At a
21 time when we all know how incredibly important it is for us to fund programs for pre-K
22 services, we sort of took our 2% hit and the first thing to go were the services to
23 children. So that is an immense concern for me. The second is I want to ditto the
24 concerns of Councilmember Andrews on reducing, or taking away the Hillandale truck,
25 taking it out of service. I have a problem with that. Also the delay in the implementation
26 of the Silver Spring flex unit. And along with my colleagues, Mrs. Praisner, Ms. Floreen,
27 the stop Kids Ride Free Program and the freeze on the Call 'N Ride Program. This
28 morning before I came upstairs for a session, I received a letter from the Trash Free
29 Potomac Water Shed initiative which is in the amount of \$50,000. This program
30 conducts the largest clean up of the Potomac River water shed in our area. So that's a
31 \$50,000 cut. It is a very important service to our community. I would like to see that put
32 back.

33
34 President Knapp,
35 Okay.

36
37 Joe Beach,
38 Just by way of clarification. The total amount for that Potomac trash reads 50; we're
39 proposing to reduce that by half to 25.

40
41 President Knapp,
42 Mr. Farber, are you capturing these are people are indicating their preferences? Thank
43 you. Okay. Mr. Berliner?



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1 Councilmember Berliner,

2 Thank you, Council President. I recall the observation of our Staff Director as to how
3 things worked in 2004, and I believe that we are déjà vu all over again with respect to
4 the pushback from this body with respect to the proposals that have been made by the
5 Executive Branch; and they have focused today as they focused then on HHS-related
6 issues on transportation-related issues and Fire and Rescue. And I think that you will
7 see that again in the action of this Council that those are areas that are going be
8 protected by this Council to a greater degree than you have done so in your proposal.
9 And I think your proposal, with the greatest respect, and I do this it was important to get
10 it, but I think the failure of that proposal is that it did expect every agency to make a
11 contribution of 2%. And I think what you are hearing -- I can tell you that the people of
12 Glen Echo are not about to see additional response time for the sole ambulance in their
13 community and to have it justified on the basis of, well we needed to do 2% across the
14 board. And Fire and Rescue came up with the best they could come up with in that
15 context. And I think you're going to hear from us and the reason why this Council asked
16 for a more formal role is to ensure that that kind of across-the-board reductions don't
17 take place and that we be more discriminating and ensure that the safety and health of
18 our community is preserved regardless of the cost. So I, like my colleagues, have
19 submitted a list of seven items to the Council President of items that I'm not comfortable
20 with, and I expect that next week we will come back with a different number and again,
21 depending on the size of the number, whether or not we will propose to you other areas
22 in which we believe these reductions can take place. But I do think there will be a
23 difference and I think that difference will be reflective of our feeling that a 2% across-
24 the-board is not the best way to go, and that this isn't a magic number. It's a good
25 number but that we can more than make up for any change in this number when we
26 tackle the fundamental issues, which will be in the '09 budget.

27
28 Joe Beach,

29 Just by way of clarification, we gave a goal of 2% for each of our departments to
30 recognize. Most were able to obtain that. But in some cases, for instance, the police
31 department, and in other cases, my own department went above, so not every
32 department contributed 2%; for the most part they did. So we tried to be as -- as
33 surgical as we could with the limited time that we had. One other thing is it's difficult
34 given the size of HHS, DPWT and Fire and Rescue and the police department, it is
35 difficult to make any meaningful reductions without effecting those departments in one
36 way or another, so that's -- .

37
38 Councilmember Berliner,

39 This isn't pretty and I appreciate the struggles that you have in putting this forward and
40 respect the work that went into this.

41
42 President Knapp,

43 Councilmember Trachtenberg.



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1 Councilmember Trachtenberg,
2 Thank you, Council President Knapp. I am going be brief in my remarks, and with the
3 request that I am going make at this time. Clearly my concerns very much relate to the
4 delivery of Health and Human Services, specifically, those services around behavioral
5 health and addiction treatment. And the first item that I want to talk about briefly is the
6 24/7 operation of the mobile crisis team, again, something that the community has been
7 advocating for, for a number of years. I can remember almost 20 years ago sitting on an
8 advisory council when we were actually looking for funding for the around-the-clock
9 operation of the crisis team. Last year during budget time here at the Council, we
10 agreed to initiate the 24/7 operation and discovered, of course, as the savings plan was
11 being forwarded that indeed, it hadn't been implemented yet. And I know in some of the
12 questions that were raised by myself and colleagues, there was an explanation provided
13 about that delay stating clearly that the delay had been due to the magnitude of the
14 fiscal impact of the wage compression compliance. And over the last few days I actually
15 have had some conversations with union representatives, and I actually would like to
16 get a written explanation as to exactly what we're talking about. Because they're telling
17 me that the delay wasn't due to that. So I want to get something in writing that says
18 otherwise. You know, clearly I'm concerned about it because it is not a new initiative; it's
19 just an expansion of something that we have been doing during business hours. And I
20 see it as an integral part of what we do to provide support around behavioral health. I
21 see it as being very vital to the operation of the Drug Court program here in
22 Montgomery County, and with conversations ongoing about the development of Mental
23 Health Court, it's very much vital to having that happen in the County. And again, I'm
24 looking at this not just around the savings plan that we're looking at here, but really
25 around what's going to happen with the budget that comes over to us in March. So I
26 would ask that we get some definition from the department about exactly why, in more
27 detail, it wasn't implemented sooner and if indeed it is related to the compression
28 compliance in what ways. The other thing I want to speak to is the discomfort that I have
29 with the reduction of treatment slots at Avery Road. Again, I want to put this into
30 context, which is we have a commitment from the Executive Branch and certainly a
31 longing within the department to expand the Drug Court here in the County. And I want
32 to get a sense from the department -- again, I'm not going to take the time today to go
33 over it in detail, but it would seem to me we wouldn't want to lose those five slots. And
34 again another way to look at this is that we have significant concerns and we have
35 reason to have them around the reimbursements from the state and the trickle-down
36 impact of different changes on a federal level. And I know in terms of addiction services,
37 there are significant concerns about funding that will be provided through the state by
38 way of the Federal Government; and that's just not specific to treatment, it's also
39 specific to case management. And I would note for my colleagues that one of the things
40 I become aware of is the fact that we actually don't have right now a contract with down-
41 county, if I'm not mistaken, to do outpatient services for adolescents who have addiction
42 issues. That is a significant void, because so many of the children that really need that
43 intervention are dependent on what the County can provide. So those are the two areas



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1 I wanted to highlight and make clear what my thoughts are at this time about those
2 proposed cuts.

3
4 President Knapp,
5 Great, thank you. Councilmember Leventhal.

6
7 Councilmember Leventhal,
8 Thank you, Mr. President. I want to very much thank my colleague, Mrs. Trachtenberg
9 for her advocacy on programs that we all care a great deal about in the HHS
10 Committee. I'm trying -- I've read this packet and I'm reading it and I'm reading it, and I
11 seem to be missing what happened to the 24-hour Crisis Center. I am looking at circle
12 16, 17, and 18. What page is that on; the crisis center?

13
14 Councilmember Trachtenberg,
15 George, it's on, let's see, page -- circle 43.

16
17 Councilmember Leventhal,
18 In the responses to our questions. But where is it in the County Executive's savings
19 plan? I know it's in there, I'm just -- it must be on some other page.

20
21 Councilmember Trachtenberg,
22 It is combined.

23
24 Unidentified,
25 Circle 17; I believes it's -- .

26
27 President Knapp,
28 S29.

29
30 Unidentified,
31 S29.

32
33 Councilmember Leventhal,
34 Oh, fine, I recall now. Okay, thank you. Well, can we -- is it your intent, Mr. President,
35 we're just getting the issues on the table and then we're going to get detailed answers
36 later.

37
38 President Knapp,
39 Yes, to the extent there are specific questions.

40
41 Councilmember Leventhal,
42 All right. Okay. Well I had several, so I apologize for taking up time. And I complied with
43 your directive that I get my questions in my January 2, but no one will be surprised to
44 learn that additional questions have arisen since then. So I have a question, if we could



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1 get an answer on circle 17, item S-24; if we could get -- if we could maintain the SHRAP
2 and the partnership for permanent housing but fund it out of the housing initiative fund.
3 We're going to be taking about uses of the housing initiative fund on Thursday and how
4 it's been spent, and my guess is given what we are learning about nearly, well a great
5 deal of unexpended funds in every program that there surely are going to be
6 unexpended funds we're now more than half way through the fiscal year in the housing
7 initiative fund; and why can we just use some of the dollars that are probably floating
8 around in that fund to maintain these vital, important housing programs for low-income
9 people. So if we could get an answer on. I ditto all of the questions from my friend and
10 colleague Ms. Trachtenberg. Although my understanding -- and I don't think it's -- I think
11 it's a non-trivial point is that psychiatrists aren't really excited about working from
12 midnight to 8:00 a.m., or a therapist or the other people who would staff the 24-hour
13 crisis center. So I think that is a, you know, I do believe, or at least I've been told and it
14 makes sense to me, that that has been a significant problem. So obviously there's a lot
15 of interest in that. There was interest from the committee that I chair and on which you
16 serve, and from the full Council. The question on a lot of these things is even if we said
17 keep the money in the budget, is it likely the position really would be filled by July 1. And
18 that's a critically important question. I would like to understand with respect to Avery
19 Road, are we kicking people out? Are the people getting services now who won't get
20 them? Or -- and the same question with Care for Kids. With some of these populations
21 when you have very low-income children, or when you have people with substance
22 abuse addiction problems, we're not reaching them. The program may be available but
23 there may not be a waiting list because these are not easy people to reach. They're in
24 communities that we don't communicate with very well; they're not all that excited about
25 working with the government; addicts may not want to kick their habit. I mean that's a,
26 you know, reaching out to people with addiction is -- has -- as Ms. Trachtenberg knows
27 far better than I, is very challenging, because some people want treatment and other
28 people don't; that's why they're addicts. So are we actually -- and Ms. Ervin's question
29 on the HHS issues is very well put -- are we reducing services that people are getting
30 now, or are we simply saying we couldn't fill them. There weren't -- the poor families
31 that would have participated in Care for Kids weren't signing up for it. Or the addicts that
32 might have been eligible for these five treatment slots at Avery Road, they weren't
33 there. So I'd to understand that.

34
35 President Knapp,
36 So that's a question for S13 and S34?

37
38 Councilmember Leventhal,
39 It is.

40
41 President Knapp,
42 Okay.

43
44 Councilmember Leventhal,



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1 It is. The -- I've never -- I don't think unless I missed it. I never got a real detailed
2 explanation of what the Obesity Prevention Program and Care for Kids is. I assume it
3 can wait for six months, but I sure have expressed an interest in that topic over the
4 years, and I'd like to understand what it was we were going to roll out there. And ditto,
5 I'd like a better explanation of precisely what the Occupational Safety Initiative --
6 Occupational Health Initiative is. That's never really been explained.

7
8 President Knapp,
9 What number is that?

10
11 Councilmember Leventhal,
12 Okay so we're on -- I'm sorry -- Item S13, reduce funds for the Obesity Prevention
13 Program and Care for Kids; that's never really been described to me, at least not in my
14 memory. If it has been, I apologize. Unless that's -- may Primary Care Coalition did give
15 me a discussion of that. But just refresh my memory on what that is. And then on the
16 Occupational Health Initiative, which is on of the items in S29.

17
18 President Knapp,
19 Okay.

20
21 Councilmember Leventhal,
22 I'd like -- if -- if the Chairman of the HHS Committee could be informed of what that is in
23 the HHS Department, he'd appreciate it.

24
25 President Knapp,
26 Okay.

27
28 Councilmember Leventhal,
29 And of course we're all going to chime in, every single one of us who speaks is going to
30 express concern about the Free Ride for Kids and the Ride On program. I don't think
31 anybody wants to cut that; and it isn't a great deal of money. And then let me just say
32 generally, Joe Beach, the way that these things are written, you know, I commend to --
33 you are an absolutely terrific Budget Director. I would say that public relations and
34 marketing probably was not -- you didn't take -- maybe you didn't listen during those
35 classes when you were getting your graduate degree, because when you describe the
36 effective and initiative as increased response time -- now I'm in Fire and Rescue, items
37 S14 and S16 -- well by how much? I mean, how much are we really putting people at
38 risk. You know, if I were -- if I were trying to pick something to scare people that would
39 be a good way to do it. If I were trying to pitch people -- pitch something to reassure
40 people, I would state it another way, like response times will still be within a margin of
41 whatever it is. So it may be that Chief Carr gave it to you this way because he doesn't
42 really want the cuts to occur, so maybe Chief Carr really is trying to scare people.

43
44 President Knapp,



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1 He did pay attention in marketing class.

2
3 Councilmember Leventhal,

4 I've played the budget game myself. I played it myself and I know how these things
5 work. So if the intent was to give us cuts that we couldn't possibly stomach and if that is
6 what Fire and Rescue did and it sort of slipped through, you know, the editor at OMB
7 was taking the day off that day, it certainly, you know, we don't know the answer to how
8 bad these delays in response times are; but they sound very scary.

9
10 Joe Beach,

11 I believe, subject to what Chief Carr might say, I believe they -- we can quantify them
12 with a lot of precision. We just knew that they would be impacted. So we don't like to
13 speculate in the answers.

14
15 Councilmember Leventhal,

16 But if you really, really want them to survive the County Council, you have to describe
17 them in a way that is not so scary. So I mean I'd rather they not happen, obviously. But
18 the way they are described, it guarantees community concern, and it could have been
19 written in a less provocative way. I reserve the right to add other issues later.

20
21 President Knapp,

22 Sure. Well recognized. Councilmember Elrich.

23
24 Councilmember Elrich,

25 I would agree with George that it could have been written in a less provocative way. But
26 had anybody read any of the discussions that were carried on in the Public Safety
27 Committee about response times, you would pretty much -- pretty rapidly discover that it
28 is provocative. I mean, we -- our response times are really not what they should be. And
29 one of our efforts has been to try to knock response times down. I would just associate
30 myself in general with the comments that my colleagues have made that's a fairly good
31 list of things I don't want to see. But I guess what I'm concerned about most is that the
32 language is --- associated most of these cuts is to delay and, you know, and put off, and
33 I don't see any analysis of this isn't working. And, you know, I think, and I'm hoping that
34 certainly in the coming budget that there's a greater sense of what works and what
35 doesn't work, and the cuts are focused first on those things that don't work. I don't think
36 anybody can possibly believe that everything we do is necessary or as it should be and
37 that there aren't things that we couldn't do better or couldn't do differently. And I, you
38 know, just -- there are no perfect organizations. And so I'm not assuming that
39 Montgomery County is any different than any place on the planet because the fact is
40 that not everything is as it should be. And we've talked through the budget process last
41 time about everything being additive that we -- we assumed that everything that made it
42 last year is in, and then we talk about what we add on top of it. And I would certainly
43 hope that in this climate of trying to come up with a budget that's going to be
44 manageable for next year that a lot of attention is paid to what works and what doesn't



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1 work. I have real problems with across-the-board cuts based on percentages. Because
2 it cuts good programs as well as programs which aren't as effective as they might be, or
3 aren't just as necessary as they might be. And I guess that's, you know, I would like to
4 have seen more of that in here, but I certainly that, you know, that as we go forward with
5 the next budget that it's not based on we have to achieve these spending targets and so
6 all departments are asked to make these cuts across board. I don't want to take away,
7 you know, the rides for kids; I don't want to cut the mental health programs that we've
8 talking about. I think expansion of medical care access is absolutely critical in the
9 community. And I guess my overriding concern is not wanting to be in a situation where
10 both raising taxes and simultaneously reducing critical services. I think that that's the
11 worst possible situation that you can be in. And I think we really need to identify with the
12 finer analysis of what we really want to be doing and what we can afford to give up
13 doing.

14
15 Joe Beach,

16 Just, very briefly, we did have some time constraints. I definitely agree looking at the
17 data, looking at performance is the best way to do it. But say even for programs that we
18 would find are underperforming, they're going to have a constituency. They're going to
19 have service recipients. There're going to be impacts there as well. And just other point
20 is even for programs that aren't working, if we don't have the resources to fund those
21 programs, there are some constraints there. So I would just.

22
23 President Knapp,

24 I'm sure we'll spend much of the rest of the next four or five months having that
25 discussion because that's probably where we're going to go. Councilmember Praisner.

26
27 Councilmember Praisner,

28 Well some very minor, minor questions, but, I had asked under fire about the code
29 enforcement items that are being cut covered by fees, and the answer is the cuts were
30 specifically chosen because they do not have an impact on revenue. That wasn't the
31 question. The question was if you hand collect a fee, then you shouldn't have them as a
32 reduction. So isn't code enforcement fee-driven in this area, in which case, why would
33 this be on the chopping block? Because it generate -- there's fee -- it's fee-generated
34 and not tax supported. And you assumed that, you know, unless the program needs to
35 be reduced because the fees aren't there, in which case whether it's permitting services
36 or fire or anyone else, where the program is fee-related at 100% then the program
37 needs to be cut if the fees are not being generated. Because presumably you have less
38 of a service-delivery obligation as well.

39
40 Joe Beach,

41 Right. My understanding was those reductions would not have impacted revenues
42 positive or negative at least for the duration of this savings plan within FY08 we could
43 make those reductions without impacting revenues either way; either through reduced



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1 revenues or not collecting additional revenues through filling those positions. So we
2 thought it was a revenue -- .

3
4 Councilmember Praisner,
5 But if it is in the budget as a fee-generated position then how is it cut as a tax-supported
6 element?

7
8 Joe Beach,
9 Well those positions are part of the tax-supported budget; it's an appropriation within the
10 Fire and Rescue Service budget. If we don't spend those funds for those positions when
11 they're filled, it accrues as a savings to the tax-supported portion of the budget without a
12 revenue impact.

13
14 Councilmember Praisner,
15 Well, I think we're going round and round on the issue of whether these position -- what
16 positions -- well then the broader question is what positions have been proposed to be
17 lapsed or cut based on -- that are fee-generated not tax-supported, and is it because
18 the fees are less or we can still do what we're doing and then the question becomes
19 one of the legal relationship between the fees and the service delivery. And you should
20 not be collecting fees greater than the service delivery cost for that service, and that
21 becomes the second question.

22
23 Joe Beach,
24 I'd just like to be able to come back to the Council with some additional information.

25
26 Councilmember Praisner,
27 Second question I have relates to the fire department and again is a question or
28 comment that I made yesterday. I would like to have a list of all the positions that are
29 essentially located in fire and the costs associated with them before we look at the issue
30 of staff in the stations versus central administrative positions.

31
32 President Knapp,
33 Okay. Councilmember Trachtenberg.

34
35 Councilmember Trachtenberg,
36 Just briefly two points of clarification, and one would relate to the availability of
37 therapists for the 24/7 mobile crisis team. If you look on circle 43 it's indicated from the
38 department in response to a question that was posed by HHS Chair Leventhal that
39 there were candidates selected in October. So I would agree with my colleague that it's
40 difficult to find people who are willing to work that midnight shift, but apparently we had
41 located some. And the second point of clarification would relate to the treatment slots. I
42 in spare time actually attend regularly two meetings. One is the Behavioral Health
43 Criminal Justice Steering Committee meeting, and the other is the Alcohol and Drug
44 Council. And I've made sure to be at both of their recent discussions where we were



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1 talking about savings plans. What I would tell you about the Drug Court program is that
2 we have customers and we're looking to double the number of folks that are in that
3 initiative. In fact, there was even discussion going back a few months ago to triple the
4 participation, but we decided to be a little bit more pragmatic and recommend doubling
5 it. So indeed those treatment slots at Avery Road are for many people the only option
6 that really would be a possible potential source of inpatient care. So just to provide
7 clarification.

8
9 President Knapp,
10 Councilmember Floreen, last question.

11
12 Councilmember Floreen,
13 Thank you. I have a looking-ahead kind of question and it's triggered by something that
14 Park and Planning provide to us, Royce. I read your memo and the footnote. And on
15 circle 95 you tell us that you're looking at shortfalls in the development review revenue
16 fund which are nearly a million dollars.

17
18 Royce Hanson,
19 Yes.

20
21 Councilmember Floreen,
22 Are you saying that there's not a submission -- you're not seeing the fees?

23
24 Royce Hanson,
25 Yes.

26
27 Councilmember Floreen,
28 That you had anticipated?

29
30 Royce Hanson,
31 That's what we're saying.

32
33 Councilmember Floreen,
34 Development applications are down?

35
36 Royce Hanson,
37 Yes.

38
39 Councilmember Floreen,
40 So -- and that translates into a significant number of people.

41
42 Royce Hanson,
43 Well, it -- it would if you're requiring that they all be funded from those revenues.



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1 Councilmember Floreen,
2 So that -- so that is another number we're going to need to keep a very close eye on.

3
4 Royce Hanson,
5 That is a substantial number for this year, and it will be a substantial number for next
6 year unless we saw a reversal in the building cycle, which we do not anticipate.

7
8 Councilmember Floreen,
9 Right. So we're going to need to -- Mr. Farber, we're going to need to track this issue as
10 well, the building revenue funds that had been created by fees and cross agencies.
11 And, Joe, reading Mr. Hanson's memo made me wonder what's not on this list in terms
12 of DPS, and I'm not sure if we have DEP fees, but certainly in permitting services, which
13 is supposed to be pretty much completely self-funded; are we seeing a similar drop?
14 And how have we -- how are we worrying about that, if that's the case? So that's my
15 question for that, and we'll have to keep a very -- .

16
17 Royce Hanson,
18 I hope you also noticed a point that we made that you had asked us to take an
19 additional salary lapse -- .

20
21 Councilmember Floreen,
22 Yes.

23
24 Royce Hanson,
25 Of 3% but invited us to come back for supplementals if we filled the positions. So we're
26 in the -- we're in the dilemma of if we take the 2% cut and no supplemental on top of
27 that we're going to be experiencing about a 4% or 5% reduction.

28
29 Councilmember Floreen,
30 Right. And that's another conversation we're going to have to have.

31
32 Royce Hanson,
33 Good. I hope we have that conversation.

34
35 Councilmember Floreen,
36 Thank you. So let's track these two things, Mr. Farber.

37
38 President Knapp,
39 Okay.

40
41 Councilmember Floreen,
42 And you get back -- .

43
44 President Knapp,



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1 Okay, that appears to be the extent of questions right now. Recognizing that once we
2 walk out of this room, colleagues may have some additional questions and recognizing
3 that the wheel also does need to stop spinning, I would ask give people till close of
4 business this afternoon -- Councilmembers to see if there any additional questions that
5 you might have or your staff might have generated that we can get to Mr. Farber to
6 share with Mr. Beach for the various departments. But with that I appreciate everyone's
7 interactions. One thing I would do -- or two things I would do; first, I think, given what
8 we've just done now and given the Council's requests for additional information, I would
9 cancel Agenda Item 14 on our agenda for today, which is intro -- which was to approve
10 the Resolution Suspend the Rules and approve, so we'll take that off. But I would call
11 for right now is [inaudible] my colleagues to introduce the resolution that wasn't number
12 14 so we can begin that clock.

13
14 Councilmember Praisner,
15 So moved.

16
17 Councilmember Trachtenberg,
18 Second.

19
20 President Knapp,
21 Councilmember Praisner moves. Seconded by Councilmember Trachtenberg. So the
22 introduction of Resolution to Approve the FY08 Budget Savings Plan is now introduced,
23 and that clock can be the platform from which we will make motions next week.

24
25 Councilmember Leventhal,
26 So what we would then be doing, which affects any of these programs, is that now that
27 it is before the Council is we would have to move to strike items in the resolution.

28
29 President Knapp,
30 Correct. Okay. I would just -- one final item for my colleagues. If you have not yet for the
31 zoning cases we have this afternoon -- Agenda Item #13 is a supplemental packet that
32 is a background policy issue that I would urge everyone to read during the break if you
33 have not yet done so. I think it provides a good basis for some of the things we'll be
34 discussing during our afternoon session. Mr. Leventhal?

35
36 Councilmember Leventhal,
37 I apologize, Mr. President. Just so we understand the ground rules. I understand that
38 we have a lack of clarity or perhaps a lack of agreement between the Legislative Branch
39 and the Executive Branch as to whether we the County Council could make cuts
40 halfway through a fiscal year that are not already requested by the County Executive;
41 that would be a dis-appropriation. So just to be clear on ground rules, I'm not clear that
42 we are able, even should we so choose, if we strike items from this list, the questions
43 going around do we have to offer an offset. I'm not clear we're able to offer any offsets.



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1 President Knapp,

2 That is a point that is not clear. And that's -- what I was hoping to try and do is given the
3 magnitude of whatever we have identified here today is to see what is the scale of that
4 and to see what options may be available to us, and to have some conversation with the
5 County Executive to see what the amenability might be to some different offsets
6 depending upon what -- I just don't know what the scale of what this all adds up to. If it's
7 -- if it's a couple hundred thousand dollars I'm sure that's a big deal. If it's \$4 million or
8 \$5 million, I think it may be worthwhile for us to identify -- .
9

10 Councilmember Leventhal,

11 I would think it's somewhere in between that range. We're right about in the middle of
12 that. I'm doing a little amateur math here and we're about halfway between those two
13 goalposts.
14

15 President Knapp,

16 I think that's going to be part of the conversation. I think this coming year is going to
17 require a lot of communication between our offices and those on the other side of the
18 street. And I think I want to be able to have that conversation to see if -- what the
19 amenability was to some proposals, should we make some. I see Mr. Berliner.
20

21 Councilmember Berliner,

22 Just, if you wouldn't mind, Council President, to ask Mr. Beach; are you familiar with the
23 County Executive's view with respect to this issue; that is if we come up with alternative
24 recommendations, is the County Executive prepared to accept our recommendations?
25

26 Joe Beach,

27 I think the County Executive would consider them, but I think we've gone to a lot of -- .
28

29 Councilmember Berliner,
30 Consider.
31

32 Joe Beach,

33 Consider -- yeah, I just couldn't commit not knowing what the substitute reductions
34 would be to say that, you know, we would support it. And by the way, by my count, we
35 were north of 4 million in credit backs.
36

37 President Knapp,

38 So long as someone in the room was counting, we appreciate that. I see no further
39 questions. We are adjourned until -- or in recess until 1:30 when we have public
40 hearing. Thank you all very much for your participation.
41
42

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**TRANSCRIPT
January 15, 2008**

MONTGOMERY COUNTY COUNCIL

PRESENT

Councilmember Michael Knapp, President	Councilmember Phil Andrews, Vice-President
Councilmember Roger Berliner	Councilmember Marc Elrich
Councilmember Valerie Ervin	Councilmember Nancy Floreen
Councilmember George Leventhal	Councilmember Marilyn Praisner
Councilmember Duchy Trachtenberg	



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1 Council President Knapp,

2 Good afternoon. This is a public hearing on Zoning Text Amendment 07-16, which
3 would amend the zoning ordinance to allow Outdoor Storage yards as a special
4 exception in the Rural Cluster Zone. Establish standards for the approval of Outdoor
5 Storage yards as a special exception and generally amend provisions related to special
6 exceptions in the Rural Cluster Zone. We have as exhibits, copy of the Zoning Text
7 Amendment 07-16 as introduced, copy of a resolution establishing the public hearing
8 date and time and of proof of advertisement in the County Sentinel. Persons wishing to
9 submit additional comments should do so by the close of business on January 18, 2008
10 so that your views can be included in the material which staff will prepare for Council
11 consideration. The PHED Committee worksession will be scheduled at a later date, no
12 we actually, nope, that one is a later date. Okay, will be scheduled at a later date and
13 we will post it online. Please call 240-777-7900 for information. Before beginning your
14 presentation, please state your name and address clearly for the record and spell any
15 unusual names. We have two speakers for this hearing. The first is Greg Russ,
16 speaking on behalf of the Montgomery County Planning Board and William Chen,
17 speaking on behalf of Gene's Johns and Rentals, Inc. We have no Mr. Russ. Mr. Chen.

18
19 Unidentified

20 Speak on behalf of Mr. Russ. I wasn't – .

21
22 Council President Knapp,

23 No, but I'll make sure that he knew you offered.

24
25 Jeff Zyontz,

26 I was informed that Mr. Russ might in fact be on jury duty today so he has got an
27 excused absence.

28
29 Council President Knapp,

30 Oh, okay.

31
32 William Chen,

33 I also understand Mr. President that – .

34
35 Councilmember Praisner,

36 Your mic's not on.

37
38 William Chen,

39 I apologize. For the record, my name is William Chen and I am an attorney for Gene's
40 Johns and Rentals. My offices are located at 200 A Monroe Street, Suite 300, Rockville,
41 Maryland 20850. Mr. President, I think the Council, you all have received a copy of my
42 letter. This Text Amendment was precipitated by a very tough situation that my client
43 has which is explained in the letter. I will say, however, that the language used in the
44 Text Amendment is not site specific. The way it has been worded has been such that



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1 you have before you a proposed Zoning Text Amendment that deals with Outdoor
2 Storage. I will tell you that for a long, long period of time, as long as I can remember,
3 that I have been involved with zoning in Montgomery County, which I don't want to tell
4 you how far back that goes, but there has not been, while the zoning ordinance has
5 always had Outdoor Storage in it, there really has not been any type of regulation or
6 much less a definition. You have an opportunity, therefore, with this Zoning Text
7 Amendment to address that. The particular issue that is harmful to my client is the
8 problem of success. Gene's Johns does include the Park and Planning Commission,
9 city of Rockville as well as private businesses for its port-a-john business. It really has
10 literally, due to its success, outgrown the ability to operate as a home occupation. And
11 that is why you have the Text Amendment. Frankly, as explained in my letter, my client
12 has tried to find other property. It has been an extensive search. It came down to,
13 literally, a situation where he might have to leave the County and go to Fredrick, frankly.
14 If that happens, he has, I think it's almost half of his employees are in the Takoma Park
15 area, residents there. He'd lose, that is how it happened. Very simply, the facts are laid
16 out in my letter. I do point out that the Clarksburg Civic Association has been involved in
17 developing this Text Amendment from almost the very beginning. Clarksburg does
18 support it. Ms. — is here as I said a moment ago and I think she does want to offer some
19 comments. And with that we will see you, I hope, in the worksessions. If you have any
20 questions, please direct them to me now. We have some photographs for the record. I
21 have given your clerk extra copies so that you all can have your own copies of them and
22 as I say, we look forward to the PHED Committee meeting.

23
24 Council President Knapp,

25 Thank you very much. I see Ms. Praisner has a question.

26
27 Councilmember Praisner,

28 Actually I have some comments for staff, and some general comments. In the past, I
29 have had an experience with Permitting Services, such that the issue of whether, what
30 guidelines or context are used in deciding whether a storage activity can occur is not
31 clear. And I think the comments in this public hearing relate to the lack of clarity that
32 exists. I am concerned and would like staff to prepare in the discussion some reference
33 to the fact that storage should not be permitted for a function that is not permitted in that
34 zone. So in other words, if you are not allowed to have auto dealerships, you should not
35 be allowed to store automobiles in that zone and same kind of context. And the other
36 point that I have is I appreciate that there is a buffer from adjoining and confronting
37 residential zones. I think that acknowledges the RC Zone as more than just rural these
38 days. But, part of the problem is the eight acres issue. I think we need to look at why
39 eight acres just because it may relate to this, but what is the, should there be, how do
40 we relate the minimum acreage issue in this context. And finally, shielding or buffer
41 should be associated with other uses, in my view, beyond residential including park
42 sites. So I would like to have that kind of conversation when we deal with the Zoning
43 Text Amendment. Thank you.



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1 Council President Knapp,
2 Thank you very much. I see no further questions.

3
4 William Chen,
5 I just, last comment, I know that you have some recommendations for language
6 changes from the Planning Board. We have no problems with them, nor even the
7 position of Clarksburg.

8
9 Council President Knapp,
10 Okay. Thank you very much. And we also have received a letter from Kathy Hoolley that
11 was given to us today on behalf of the Clarksburg Civic Association and we appreciate
12 that and appreciate your working with the community.

13
14 William Chen,
15 Thank you.

16
17 Council President Knapp,
18 Our next public hearing is agenda item number 9. This is a public hearing on a
19 Supplemental appropriation to the Department of Economic Development's FY08
20 Capital Budget and amendment to the FY07-12 Capital Improvements Program in the
21 amount of \$2,200,000 for the Germantown Business Incubator. A Planning, Housing
22 and Economic Development Committee worksession is tentatively scheduled for
23 January 24th at 2:00 p.m. Persons wishing to submit additional comments should do so
24 by the close of business on Thursday, January 17th so that your views can be included
25 in the material which staff will prepare for Council consideration. Before beginning your
26 presentation, please state your name clearly for the record and spell an unusual names.
27 There are no speakers for this hearing. One of the questions I did have for staff,
28 although clearly we do not have any staff doing this one, do we have any Council staff
29 doing this? Jeff, how about if you take notes? In the packet is a breakout of different
30 ways to pay for this or different contributors to how to pay for this. As I recall, it's about
31 \$850,000 is identified as general revenue from the County and it is my question as to
32 whether or not any of that could be covered through GO Bonds or any other
33 mechanism. Obviously looking at how we're trying to address supplementals, general
34 funds is going to be a significant issue for us to rectify over the course of the next
35 couple months and so we're going to have to look at some alternatives. So, Peter, I
36 don't know if you have.

37
38 Peter Bang,
39 For the record, my name is Peter Bang, I represent the Department of Economic
40 Development. The 850,000, out of 2.2 new appropriations, 850,000 represent County's
41 portion and we had prior discussion with the OMB and the Finance but because of the
42 private use of the Incubator Facility, their take is that it should be a current revenue as
43 opposed to GO Bond proceeds.



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1 Council President Knapp,
2 Ok. Alright. Thank you very much. Ms. Praisner.

3
4 Councilmember Praisner,
5 Well, for the benefit of our discussion later, if folks could pass this along, I am extremely
6 troubled by the answers and by the fact that we make estimates for building, design, et
7 cetera, making assumptions that some things can be reused or used and then come
8 back further on in the process. And the question is, if you don't get the funding what can
9 you do?

10
11 Council President Knapp,
12 No, and I think to some extent, there was a question in the packet as it relates to what
13 was anticipated as the estimate. Could we have had a better estimate? Why are we
14 back looking at this shortfall? And I think that when it gets to committee there is going to
15 have to be a fair amount more discussion about that. Because I didn't think the question
16 fully fleshed that out in a way that was, I was comfortable with given the fact that we're
17 going to take up our CIP budget over the course of the next couple months.

18
19 Peter Bang, 20

20
21 Yes, Mr. President, we'll be ready to address those details during the PHED Committee
22 meeting.

23
24 Council President Knapp,
25 Okay. Great. Thank you very much. This concludes this public hearing. Our next
26 agenda item number 10 is a public hearing on a Special appropriation to the
27 Department of Recreation's FY08 Capital Budget and amendment to the FY07-12
28 Capital Improvements Program in the amount of \$560,000 for the Wheaton Community
29 Recreation Center. A Planning and Housing and Economic Development Committee
30 worksession is tentatively scheduled for Thursday, January 17, 2008 at 2:00 p.m. The
31 record will close at the conclusion of the hearing. Before beginning your presentation,
32 please state your name clearly for the record and spell any unusual names. We have
33 one speaker for this hearing, Stephen Kaufman, as an individual. Mr. Kaufman. Steve.

34
35 Stephen Kaufman,
36 Mr. President, members of the Council, good afternoon. I am Stephen Kaufman with the
37 law firm of Lenos and Blocker. We're here today to support this request for a
38 Supplemental appropriation by the County Executive. Our firm has represented the
39 developer of the townhouses which will replace what was once the location of the Good
40 Council High School in Wheaton and we have been in consultation with the County
41 Executive over a significant period of time to cooperate in efforts to preserve the
42 Rafferty Center. The Rafferty Center was the gymnasium of the original high school.
43 And although our clients are certainly pleased to turn over this facility to the County, it
44 does need some stabilization and it also will need some additional improvements. This



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1 Supplemental appropriation, which we address in the written comments I just gave to
2 you, will enable the County Executive to move quickly to stabilize the building and to
3 begin to develop plans to renovate the building. We are in the midst of entering into a
4 memorandum of understanding on the property with the County, a written
5 understanding which we hope will be finalized within the next few weeks. Also my
6 clients are prepared and are proceeding to do some initial stabilization and esthetic
7 work on the building within the next 30 days. It is our hope that with the Council
8 approval of this Supplemental appropriation that the Rafferty Center can be turned over
9 to the County Executive within the next 30 days. I will be glad to answer any questions
10 that you have.

11
12 Council President Knapp,
13 Thank you very much. Councilmember Floreen.

14
15 Councilmember Floreen,
16 Thank you. Mr. Kaufman? How did it come to be that the building needed stabilization?

17
18 Stephen Kaufman,
19 Well, the building was not a free-standing building. It was attached to the original high
20 school building. And when you took the walls away for the high school building, there is
21 an area there where there was a corridor in the front of the building, which is not a
22 bearing wall. And that corridor and that wall needs to be stabilized.

23
24 Councilmember Floreen,
25 Well, I guess when we, we're going to talk about this in a couple days, I would like to
26 have a little bit more conversation with the players in this to understand why, I think it
27 was a condition of some approval that this building, facility was to be made available to
28 the County, provided to the County. Right?

29
30 Stephen Kaufman,
31 The understanding was that it would be provided to the County, provided the County
32 would take the steps necessary to administer the building, secure the building, and
33 renovate the building.

34
35 Councilmember Floreen,
36 Right. But I thought we thought we'd would get a building, not one that was in danger of
37 -- .

38
39 Stephen Kaufman,
40 Well, you are getting a building. It's not in danger.

41
42 Councilmember Floreen,



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1 And not to pick at nits at this point. We save that for committee of course. I would like
2 folks to be prepared to talk to us about this. As well as, what is the, is this it, in terms of
3 the cost associated with this facility?
4

5 Gabriel Albornoz,
6 No, it is not.
7

8 Councilmember Floreen,
9 And if you can.
10

11 Gabriel Albornoz,
12 And my name for the record, Gabriel Albornoz.
13

14 Councilmember Floreen,
15 Taking Mr. Kaufman off the hook here.
16

17 Gabriel Albornoz,
18 Okay. My name for the record is Gabe Albornoz. The Director of the Department of
19 Recreation. Good afternoon, everyone. I do have testimony that addresses some of
20 those questions which I would like to just state very quickly for the record and then
21 certainly we will entertain any questions and obviously there will be a lot of follow-up at
22 the PHED Committee hearing.
23

24 Councilmember Floreen,
25 Okay. I did not know you were scheduled to speak.
26

27 Gabriel Albornoz,
28 Yeah. I was not and that was our fault so I apologize for that, but. Good afternoon, my
29 name is Gabe Albornoz, as I mentioned before. I am pleased to present this testimony
30 on behalf of the County Executive in support of the County Executive's recommendation
31 for a Supplemental appropriation to the FY08 Capital Budget in the amount of \$560,000
32 for the Wheaton Community Recreation Center or Rafferty Center, as it's known. As
33 indicated in the transmittal of the proposed Supplemental appropriation, these funds will
34 be used for stabilization of the Rafferty Center which has been left exposed due to the
35 demolition of Good Council High School and design of the renovation work for the
36 Rafferty Center. This request arises out of a condition imposed by the Council when the
37 property, upon which the building sits was rezoned. Specifically the Council required
38 that the Rafferty Center must be retained for public use provided that a public entity
39 assumes responsibility with adequate parking, visibility, and pedestrian access. We
40 have identified a solution to the parking requirements for the site and are now
41 concluding the negotiation of the agreement pursuant to which the developer will
42 convey the Rafferty Center to the County. The Rafferty Center will provide much
43 needed community space in Wheaton in the form of a full-service community recreation
44 center by using the Rafferty Center and existing Wheaton Recreation Center on the



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1 nearby park site. The cost estimates were developed to include the temporary
2 stabilization of the Rafferty building, now separated by demolition from the high school
3 buildings. Since the submission of the proposed Supplemental appropriation, the
4 County and the developer have had further discussions about securing the building.
5 These discussions have resulted in a willingness on the part of the developer to pay for
6 a portion of the necessary stabilization and a temporary facade. Although the developer
7 will be contributing to the cost of the work, we still need funds for some of the work and,
8 because this work is work on an older, partially demolished structure, we anticipate that
9 there could be unexpected conditions as the work is carried out. This action is time-
10 sensitive as deterioration of the structure could occur due to winter weather or
11 unprotected access by vandals. The request also includes the design development of
12 the construction documents for the anticipated construction in the FY09-14 CIP. The full
13 project, which will be reflected in the upcoming CIP, consists of the remodeling of the
14 existing Rafferty building and a small addition to provide an entrance, restrooms, office
15 space, and other amenities typical of a community recreation center. Although
16 individually smaller than the typical center, this building would operate in tandem with
17 the existing Wheaton Recreation Center operated by our department. This project
18 requires both the construction of the modifications to the Rafferty building, as well as the
19 design, development, and construction of renovations to the Wheaton Center. The
20 combined buildings will approximate the size and services of a full service community
21 recreation center which is approximately 33,000 plus square feet. At the current time,
22 the County is in the process of completing agreements with Centex, developer of the
23 Good Council site to include an MOU detailing the conveyance of the building and
24 necessary rights to the County specifying certain access and rights of way. Utility
25 easements, et cetera, all necessary for the property transfer. Discussions are ongoing
26 as to the specific method of completing the stabilization by the County or by the
27 developer, trying to determine the most effective and efficient approach. As an adjunct
28 to the draft MOU, and as mentioned earlier, Centex has offered to contribute towards
29 the cost of the stabilization and temporary façade. This contribution is in the amount of
30 \$50,000. Once stabilization is underway, the Division of Capital Development and
31 Department of Recreation will undertake consultant selection for the design of the
32 renovations and additions. It is anticipated that this work will be advanced enough to
33 allow the construction requirements to be accurately estimated and funding proposed as
34 an FY10 CIP Amendment.. This amendment will also include the design development
35 funding request for architectural work on the existing Wheaton Center and I should also
36 note, just very quickly, that the Wheaton redevelopment has sought to bring additional
37 and diverse housing to the downtown Wheaton area. In order to both create a critical
38 mass of existing and new businesses and to encourage a vibrant 24 hour 7. So, we just
39 think this project makes a lot of sense and will expand recreation opportunities.

40
41 Council President Knapp,
42 Thank you. Councilmember Floreen, did you have a question?

43
44 Councilmember Floreen,



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1 Well, so are you saying then, that the rest of the dollars associated with this project are
2 in the County Executive's CIP we got this morning?

3
4 Gabriel Albornoz,
5 No. The design development money is there. We are not going to commit resources to
6 the construction until we have a better sense of what those costs might be. But the
7 design development and working with Department of Public Works and Transportation,
8 we will do that. And then once there is a cost figure, there will be an amendment to the
9 2010 CIP.

10
11 Councilmember Floreen,
12 Okay. So details to come later?

13
14 Gabriel Albornoz,
15 Right.

16
17 Councilmember Floreen,
18 Alright.

19
20 Council President Knapp,
21 Stay tuned. Councilmember Leventhal.

22
23 Councilmember Leventhal,
24 Mr. Albornoz, I appreciate that the Recreation Department sees this as a window of
25 opportunity in a dense urban area to take advantage of a site that, I guess, is being
26 developed under the optional method. I guess this must have been one of the amenities
27 that was offered up. No.

28
29 Gabriel Albornoz,
30 Yes, that's correct.

31
32 Councilmember Leventhal,
33 Yes. So it was an amenity that was offered up in order to take advantage of optional
34 method. I look forward to working with you on other opportunities to expand recreation
35 programs in dense urban areas where we try to take advantage of opportunities when
36 they arise even if we can't always anticipate them. I think that is, it is important not to be
37 wedded, necessarily, to a plan that may be developed in advance when new things
38 come up. And I have a facility in mind and you probably know which one it is.

39
40 Gabriel Albornoz,
41 Great.

42
43 Council President Knapp,
44 Thank you. There are no more questions. This concludes this public hearing.



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1
2 Stephen Kaufman,
3 Just one other point. The Wheaton Rescue Squad is also able to move as a result of
4 this overall working partnership between the public and private sectors.
5

6 Council President Knapp,
7 Thank you.
8

9 Councilmember Leventhal,
10 Great. Thank you.
11

12 Council President Knapp,
13 Okay. Agenda item number 11. This is a public hearing on Bill 39-07, Agricultural Land
14 Preservation –Amendments which would conform County Law concerning the purchase
15 of agricultural easements to the requirements of State Law and generally amend County
16 Law governing the purchase of agricultural easements. A Planning, Housing and
17 Economic Development Committee worksession is tentatively scheduled for February
18 7th at 2:00 p.m. Persons wishing to submit additional comments should do so by the
19 close of business on Friday, January 25, 2008 so that your views can be included in the
20 material which staff will prepare for Council consideration. Before beginning your
21 presentation, please state your name clearly for the record and spell any unusual
22 names. We have two speakers. Jeremy Criss on behalf of the County Executive and
23 Margaret Chasson representing the League of Women Voters of Montgomery County.
24 Mr. Criss. Margaret come up.
25

26 Jeremy Criss,
27 Good afternoon. My name is Jeremy Criss. I am the Agricultural Services Manager for
28 the Department of Economic Development. I'm speaking on behalf of the County
29 Executive, Isiah Leggett, in support of Bill 39-07 which proposes to amend Chapter 2B
30 of the County Code and pertains to our agricultural preservation programs. Montgomery
31 County is a leader in agricultural preservation because landowners have several types
32 of preservation programs they can select for their farms. The County's agricultural
33 preservation programs are recognized as a national model in terms of the total acres
34 that we have protected under easements. I have attached a map to my testimony that
35 shows the properties that are protected by easements. The proposed changes to
36 Chapter 2B are needed so that Montgomery County will be consistent with the
37 administrative procedures of the state of Maryland for reviewing and approving
38 properties enrolled in our agricultural preservation programs. The Agricultural Reserve
39 is an important component of the County. And the accomplishments of our farmland
40 preservation programs were reviewed as part of the Ad Hoc Agricultural Policy Working
41 Group. The County Executive understands the intent of this Bill pertains to the initiatives
42 recommended by the Agricultural Policy Working Group. The Executive supports the
43 legislative intent of 39-07 as it will help to further support the Agricultural Reserve and
44 legislative intent of our Rural Density Transfer Zone. The County Executive is



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1 committed to the preservation of the Agricultural Reserve which includes the pursuit of
2 farming as a way of life, a livelihood and a viable industry in Montgomery County. The
3 Executive believes this Bill will simplify the administration of our agricultural preservation
4 programs. The Executive staff, including myself, will be available to assist the County
5 Council as the Bill is discussed in committee. On behalf of the County Executive, thank
6 you for this opportunity to provide these comments in support of Bill 39-07.

7
8 Council President Knapp,
9 Thank you very much. Ms. Chasson.

10
11 Margaret Chasson,
12 I am Margaret Chasson, the Chair of the Agriculture Study Committee for the League of
13 Women Voters in Montgomery County. In addressing agricultural easements, the
14 League of Women Voters of Montgomery County are quite supportive of the County's
15 use of this tool to preserve land for the purpose of producing food and fiber. We are
16 concerned that the Bill 39-07 would allow easements to be used to preserve
17 recreational pursuits such as equestrian events and activities. Our position is that
18 easements should be limited to agricultural uses as defined by the U.S.D.A. and in the
19 2002 County zoning ordinance, not including equestrian activities. The definitions in the
20 Bill are quite unclear. For example, principle residence is defined as the property's
21 primary residence. While primary residence may be defined for an individual, it is not
22 clear how this relates to the property. And the relationship between tenant house and
23 the principle dwelling as an accessory use arrangement seems quite obscure. The term
24 productive agricultural land defined as land eligible for easement is not well defined.
25 While the state requires compliance with the criteria of the foundation for land to be
26 eligible, the County easements do not seem to consider a productivity factor. The
27 requirements are size, soil type, and location. It seems appropriate that some
28 consideration of productivity be a part of the eligibility process. A requirement for the
29 APAB to establish consistent criteria for identifying productive agricultural land would be
30 consistent with state practice. The exceptions to the County criteria for purchase are so
31 broad that a very small group has the decision making power as to eligibility for
32 easement. Under the guidelines for the County easements, does a TDR easement
33 preclude further development, if the TDR's have been severed or if some of them have
34 been severed? We don't know. While the exception to the County easements
35 requirements references Chapter 59 with regard to lot size, it appears to allow lots for
36 children, more lots for children than the County Zoning Code would. Would it not be
37 better for the County easements to simply restrict the size of lots for children and the
38 number to no more than three subject to the zoning requirements in effect. As currently
39 written, the Bill seems to allow three lots on 51 acres even in the RDT Zone. The
40 removal of a timeline for the process to approve or terminate or repurchase an
41 easement does not seem beneficial to the landowner, the County or the public. An
42 efficient and timely process is desirable. Thank you for the opportunity to comment.

43
44 Council President Knapp,



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1 Thank you Ms. Chasson. Ms. Praisner.

2
3 Councilmember Praisner,

4 Yes. We had a, excuse me, a conversation several months ago within the PHED
5 Committee, I believe, discussing easements and the types of easements and the
6 duration of those easements. Some go away. And so the question of what benefits
7 there are when the easements are not permanent becomes an issue and what rights or
8 options are available become an issue. There are also state easements and programs,
9 as is noted, as well as County easements. My recollection is of a brief conversation with
10 the Chair of the Planning Commission, Mr. Hanson, about the easement issues, he
11 being a, very involved at the state level. So I would like to use this Bill as an opportunity
12 for the PHED Committee's conversation to go beyond the changes in this legislation and
13 to have a broader discussion about easements, ensuring that, yes, consistency with the
14 state where it's required, but also that we strengthen the easement program to ensure
15 that there are no abuses and that in the long run our policies are adhered to, our overall
16 goal for the Ag Reserve is adhered to. Thank you.

17
18 Margaret Chasson,
19 I think -- .

20
21 Councilmember Praisner,
22 Margaret's questions need to be answered as well.

23
24 Margaret Chasson,
25 You probably have noted that the state no longer allows the easements to be
26 terminated.

27
28 Councilmember Praisner,
29 That was part of our initial conversation was that the state does not allow them to be
30 terminated yet we do.

31
32 Council President Knapp,
33 Ms. Floreen.

34
35 Councilmember Floreen,
36 Alright. Thank you. And I'm glad Ms. Praisner said what she said about this. I am just a
37 little confused. Insofar as we spent a lot of time talking about easements previously and
38 now we are returning in a somewhat different context. Jeremy, I gather this is to
39 conform what we did, whatever we have with the state requirements? Is that correct?

40
41 Jeremy Criss,
42 Yeah. There was a Bill passed in the 2007.

43
44 Councilmember Floreen,



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1 Yeah.

2

3 Jeremy Criss,

4 General Assembly that removed what is called a district agreement. So that was the
5 primary reason for amending the Chapter 2B.

6

7 Councilmember Floreen,

8 That was the basis for initiating this work.

9

10 Jeremy Criss,

11 That is correct.

12

13 Councilmember Floreen,

14 And I guess my question is, how does this get into the other work we have done on
15 this? As Ms. Praisner has alluded to, to a certain degree, we had several provisions, I
16 thought we had passed, having to do with the uses that could be permitted on ag land
17 subject to an easement and the TDR issue. And I guess, I would like, when we take this
18 up, to understand the interrelationship between all these points and Margaret certainly
19 has been in this, how long has it been? Three years, four years?

20

21 Margaret Chasson,

22 Oh no. No.

23

24 Councilmember Floreen,

25 It's a long, well, for you, a very long time but especially for our working group on this,
26 understanding how this intersects with those initiatives, some of which work has been
27 concluded, others of those.

28

29 Council President Knapp,

30 Right.

31

32 Councilmember Floreen,

33 Initiatives are still awaiting resolution. I'd like to understand all that. And in addition, are
34 we creating a new Agricultural Board, this Easement Board.

35

36 Jeremy Criss,

37 No ma'am. The Agricultural Preservation Advisory Board was established back in 1977.

38

39 Councilmember Floreen,

40 So, that's the Agricultural Preservation, okay, so we're just restating that and saying it
41 again. That's all. Okay. Because it's confusing to see all this as new legislation once
42 again. So, perhaps a little bit more background would ease my comfort level on this and
43 so that we understand how these rules support, advance, or are consistent with or not,



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1 with everything else we've been doing on the ag easement front. And maybe it's all
2 packaged but I'd like to see that analysis when we get to it. Okay. Thanks very much.

3
4 Council President Knapp,
5 And is there any specific timing in which they needs to be acted upon given the fact that
6 we're, response to changes at the state level?

7
8 Jeremy Criss,
9 I'm not aware of any specific deadline.

10
11 Council President Knapp,
12 Okay.

13
14 Jeremy Criss,
15 That we are under. We are moving forward with the properties that we have, and so this
16 is something that we need to do because of the changes that the state did last year.

17
18 Council President Knapp,
19 Okay. But to Ms. Praisner's point, recognizing a lot of the outstanding agricultural issues
20 we have, this touches on some different than some others to the extent that we are
21 addressing all of those in a more collective, comprehensive way, we don't have to do
22 this one separate apart because it has to happen more quickly.

23
24 Jeremy Criss,
25 No.

26
27 Council President Knapp,
28 Okay.

29
30 Jeremy Criss,
31 We need to do it together with all of the other pieces and parts.

32
33 Council President Knapp,
34 Okay. Good. I see no more questions. This concludes this public hearing. Thank you
35 very much. We now turn to District Council Session, agenda item 12. We have before
36 us as Action, Consideration of the Hearing Examiner's Report and Recommendation,
37 Application Number G-870.

38
39 Marty Grossman,
40 Good afternoon, Mr. President.

41
42 Council President Knapp,
43 Good afternoon.



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1 Marty Grossman,

2 This case is not the typical rezoning case because, two reasons, one is it was filed not
3 by the property owner but by the Maryland National Capital Park and Planning
4 Commission and also because it doesn't seek to convert a Euclidian zone into a floating
5 zone which is the typical case that you get but rather the reverse, a floating zone back
6 to a Euclidian zone. And because of this difference, because a Euclidian zone is sought
7 here, a different set of standards apply which is known as the Maryland Change Mistake
8 Rule. And under that Maryland Change Mistake Rule, the applicant has to show either
9 that there has been a change in circumstances in the community or that there was a
10 mistake made in the sectional rezoning. And the latter is what the applicant has shown
11 in this case. The sectional rezoning in G-800 was based on a revised master plan for
12 the Potomac sub-region, and in that revised master plan, some language crept in to
13 bullet points which implied that the OM Zone on this site could remain subject to an
14 overlay zone. There is other language in the master plan saying that the OM Zone is in
15 fact inappropriate for this site and it is clear that there was some reliance upon the
16 erroneous language in the master plan in creating G-800 sectional map amendment
17 which left the OM Zone in place. And so the application here is to end this split zone
18 that exists there now and make it all a C-1 Zone subject to the overlay zone. And so that
19 was what the evidence showed, supported, and there was no opposition. We
20 recommend, I recommend that it be granted.

21
22 Council President Knapp,

23 Alright. I just wanted to commend you. I thought that your explanation of the Change
24 Mistake Rule and how you laid it out actually in the resolution was very thorough and
25 very helpful for someone like me who has not seen that before. Turn to Ms Praisner for
26 questions.

27
28 Councilmember Praisner,

29 Well, just a comment. These are the challenges of doing rezoning after a master plan
30 and it is twofold. One, errors that may appear, and when they are caught and how they
31 are caught. And number two, land that is not discussed during the master plan process,
32 because there is no assumption that the property owner wants to change something.
33 Those are two issues, both of which concern me, and I wondered if we could ask Park
34 and Planning to, when we have the discussion of the master plan process within the
35 PHED Committee, Jeff, if we can discuss not only the Change Mistake issue when the
36 rezoning does not cover accurately what the master plan was adopted to do, and
37 secondly, the issue of land that we never discussed and what may happen with that.
38 Okay? I'll move approval.

39
40 Council President Knapp,

41 Ms. Praisner moves. Seconded by Councilmember Trachtenberg. We have a role call
42 vote. Madam Clerk, if you would call the roll.

43
44 Council Clerk,



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1 Mr. Elrich.
2
3 Councilmember Elrich,
4 Yes.
5
6 Council Clerk,
7 Ms. Ervin.
8
9 Councilmember Ervin,
10 Yes.
11
12 Council Clerk,
13 Ms. Floreen.
14
15 Councilmember Floreen,
16 Yes.
17
18 Council Clerk,
19 Ms. Trachtenberg.
20
21 Councilmember Trachtenberg,
22 Yes.
23
24 Council Clerk,
25 Mr. Leventhal.
26
27 Councilmember Leventhal,
28 Yes.
29
30 Council Clerk,
31 Ms. Praisner.
32
33 Councilmember Praisner,
34 Yes.
35
36 Council Clerk,
37 Mr. Berliner.
38
39 Councilmember Berliner,
40 Yes.
41
42 Council Clerk,
43 Mr. Andrews.
44



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1 Councilmember Andrews,
2 Yes.

3
4 Council Clerk,
5 Mr. Knapp.

6
7 Council President Knapp,
8 Yes. The Hearing Examiner's Report and Recommendation has been agreed to. And
9 we now move on to --.

10
11 Marty Grossman,
12 Thank you Mr. President.

13
14 Council President Knapp,
15 Thank you. We now move to Oral Argument. The Council, I can't even remember when
16 we took this up last. Jeff, when was that? Was it back in November?

17
18 Jeff Zyontz,
19 Yes.

20
21 Council President Knapp,
22 Back in November when the Council first heard this, concluded that this was something
23 that we wanted to hear or have for Oral Argument. By virtue of that decision, both
24 opponents and supporters of the Hearing Examiner's Recommendation have 30
25 minutes to present two issues. The Hearing Examiner's Recommendation to remand in
26 order to address traffic concerns and traffic mitigation and the compatibility of the
27 proposed development. The division of time for individual speakers for this is
28 determined by each respective side and we have got quite an assortment of folks
29 speaking. And so we're going to have quite a timekeeping chore but I know the Clerk is
30 up to it. Those parties that are opposed to the Hearing Examiner's Recommendation
31 present first and they may reserve time for rebuttal. The Hearing Examiner will instruct
32 the Council if any material presented strays from the record and we also will ask the
33 Hearing Examiner to help to keep the presenters on the two issues that we allowed for
34 in the Argument. First up we have Mr. Steve Robins. The applicant's representative and
35 he has 23 minutes. Any opening remarks?

36
37 Francoise Carrier,
38 No. I'll be happy to answer questions from the Council after.

39
40 Council President Knapp,
41 Okay. Good. Okay. So, and in here, Mr. Robins, it doesn't indicate that you're reserving
42 time for rebuttal so.

43
44 Steven Robins,



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1 Between myself and Mr. O'Neil and then Mr. Ross had a couple minutes.

2
3 Council President Knapp,
4 Had a couple minutes. Oh, and so this five minutes reserved for rebuttal is for, okay. So,
5 23 minutes for Mr. Robins.
6

7 Steven Robins,

8 Good afternoon, President Knapp and members of the Council and welcome back from
9 your vacation. It's particularly great to see Councilmember Leventhal and
10 Councilmember Praisner back on the dais. My name is Steven Robins, from the law firm
11 of – and Brewer. And I'm also here with Patrick O'Neil from our firm. Our firm represents
12 Glenmont Layhill Associates, an affiliate of the JBG Company and the applicant for both
13 applications. Before we begin, as Mr. Knapp had mentioned, we would like to reserve
14 five minutes for rebuttal. We are here today to discuss with the Council certain aspects
15 of the Hearing Examiner's Report. It is unfortunate that despite a very positive Report,
16 the Hearing Examiner has recommended a remand based on the issue of
17 transportation. We felt differently and are here to tell you why, in our opinion, a remand
18 is not needed. While there are two issues that are the subject of the argument,
19 measuring traffic impact and compatibility, we would first ask the Council to consider
20 two guiding principles. We trust that the County and the Council are serious about
21 encouraging transit oriented development. The property is a 31-acre site that essentially
22 is an island surrounded by metro located facilities and/or major roads. And if you take a
23 look at the exhibits that are handed out to you as well as the development plan, you can
24 see what I mean. The sector plans recommends the density proposed in the
25 applications, up to 1,550 units together with commercial opportunities. The applicant
26 has included 90,000 square feet of commercial space, primarily a grocery store,
27 convenience retail, restaurants, and other retail desired by the community, along with
28 potentially some live/work space. Stage one, which contemplates approximately 4,000
29 square feet of retail, together with 500 new units, is anticipated to begin in 2009 and to
30 be completed somewhere in the 2012 to 2014 range. Stage two would be completed
31 thereafter. This is explicitly in line with the recommendations contained in the sector
32 plan. As part of the Council's growth policy review process, a recurring theme was to
33 concentrate and encourage development around Metro Stations. This is exactly what
34 the applicant is doing here. The density is exactly where it should be. The project before
35 you has been recognized by the Washington Smart Growth Alliance, a partnership
36 comprised of varied interests including the Urban Land Institute, the Chesapeake Bay
37 Foundation, the Greater Washington Board of Trade, the Coalition for Smarter Growth
38 and the Metropolitan Washington Builder's Council. The project also has been selected
39 to participate in the U.S. Green Building Council's Lead for Neighborhood Development
40 Pilot Program, a very exclusive program that deals with neighborhood walkability, green
41 space design, and the like. The second issue I would pose is that, in our opinion, the
42 County and the Council certainly believe that planning tools like the sector plan and the
43 guidelines should be followed. The Glenmont Metro Center, as I mentioned, embraces
44 the sector plan. The Hearing Examiner found this to be true. The development was



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1 specifically envisioned by the sector plan. In fact, the sector plan states that the arrival
2 of the Red Line was the impetus for the recommendations to create a transit village on
3 the property. The first three sentences of the sector plan's vision specifically state,
4 quote, the Glenmont of the future will be a transit oriented development area. A
5 compact mixed-use center will be the focus of the community activity and establish a
6 sense of place. New development will be concentrated around the new Metro Station.
7 That's exactly what we're proposing. A remand based essentially on a traffic policy
8 determination could not only harm this project, but from a broader view, could have a
9 significant impact on the momentum for future transit oriented development in the
10 County. The applicant has followed all of the rules, guidelines, and procedures and past
11 practices necessary for approval. Equally important, these applications are in the public
12 interest. They revitalize Glenmont, promote transit ridership, provide another form of
13 much needed housing, and concentrate development around a very important Metro
14 Station. From the colored exhibits that are before you, you're able to see what the site
15 looks like today. Essentially the sector plan reiterates that this development opportunity,
16 as presented before you, cannot become a missed opportunity for redevelopment in
17 Glenmont. The Hearing Examiner has stated that if the Council chooses to follow well
18 established rules and procedures, the applicant has met its burden for the applications
19 to be approved without the need for a remand. We urge you to concur. Please
20 remember that these are rezoning applications, the project will receive further
21 comprehensive reviews as it navigates through the land use approval process like
22 subdivision site plan, record plat, and building permits. At the time of subdivision, the
23 entire project will be retested for the adequacy of public facilities per the new growth
24 policy. The reason why we asked for Oral Argument was to address the Hearing
25 Examiner's view on the methodology for measuring traffic impact in a zoning case, the
26 CLV or Critical Lane Volume technique. As you know, the Hearing Examiner
27 recommended that the applications be remanded to take additional evidence on certain
28 traffic related conditions. But for this point, the Hearing Examiner supported approval for
29 both applications. At the core of the Report, and the real issue for this recommended
30 remand, is a Hearing Examiner's apparent challenge to the validity of the CLV technique
31 for measuring traffic impact in this application, despite the fact that the applicant's traffic
32 study, prepared by Craig Headburg of Integrated Transportation Solutions, was scoped
33 out by technical staff and thereafter carefully reviewed by staff, the State Highway
34 Administration, and ultimately the Planning Board. The CLV methodology is relevant to
35 the proceeding because the LATR guidelines on page one require such an analysis,
36 even for a rezoning. As the Hearing Examiner points out in her Report, the Council's
37 practice has been to accept the CLV approach as part of the study tool to judge the
38 adequacy of public facilities and its relationship to the compatibility and public interests.
39 Applicants must submit an LATR study to satisfy this burden. The Hearing Examiner
40 states that her recommendation represents a departure from the District Council's
41 typical approach to traffic analysis in rezoning cases, and it is also a departure from the
42 Planning Board's policy for rezoning cases that satisfying LATR is sufficient to
43 demonstrate that the project will not have an adverse affect on traffic conditions. The
44 County and the Planning Board have set a standard and requirements for an applicant



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1 to follow. How can an applicant be faulted for doing just that? Technical staff did not
2 raise any of the issues raised by the Hearing Examiner in her Report regarding the use
3 of the CLV methodology, or the need for other forms of analysis like a queuing analysis.
4 Neither did the Planning Board. Over the years, the Council has evaluated traffic
5 impacts in hundreds of cases. A number of which have been significantly more
6 controversial than this matter. As the Hearing Examiner pointed out, the Council and
7 Hearing Examiner have accepted the CLV methodology in the making of transportation
8 findings. The opposition presented hearsay testimony from certain individuals criticizing
9 the CLV methodology. The applicant objected to this testimony as a means of attacking
10 the CLV methodology and reiterated that the rezoning form was not the appropriate
11 venue for such an argument, particularly when the LATR guidelines – such a study and
12 the Council's past practice for evaluating traffic unquestionably does too. This very issue
13 of assessing traffic impact was raised as part of the growth policy that you just
14 reviewed, and remains an item for future consideration as part of a comprehensive
15 review, not as part of an individual zoning case. CLV's continue to be the best available
16 traffic analysis methodology at this point in time. The specific issue has been raised and
17 debated in years past before the Planning Board and the Council, and it was concluded
18 that the CLV methodology was, and should be, the County's measuring stick for a
19 planning tool for traffic impact. It is a procedure that has been endorsed over time. The
20 CLV method of calculating the level of congestion is accepted by most agencies in
21 Maryland, including Park and Planning, the State Highway Administration, DPWT, and
22 even the cities of Rockville, Gaithersburg and Takoma Park. The CLV analysis is a
23 planning tool which does not rely on projections of future signal timing or/and other
24 operational characteristics that are dependent on traffic conditions existing at that point
25 in time. The methodology is easy to understand, using peak hour traffic volumes and
26 number of lanes approaching the intersection. The CLV methodology considers all
27 intersection, excuse me, approaches and focuses on conflicting traffic movements
28 through the intersection. Some intersection approaches will experience greater
29 congestion and traffic use than other approaches and these conditions frankly depend
30 on the time of day. Using the CLV methodology, the applicant's study reflects an
31 existing CLV condition at the Georgia Avenue/Randolph Road intersection that is close
32 to, but still below the 1800 CLV congestion standard. This is defined in LATR in the
33 Council's growth policy as being, quote, acceptable in a Metro Station Policy Area even
34 though it does represent a congested situation. While it is readily apparent that the
35 intersection experiences congestion, since the intersection approaches the 1800
36 standard, the Hearing Examiner seems to embrace a different definition for what is
37 acceptable than is envisioned by the LATR guidelines. By indicating that the condition at
38 the intersection is not one that would be reasonably perceived as acceptable. As a
39 result, the Hearing Examiner questions whether the proposed mitigation is sufficient.
40 The study confirms that, despite the Hearing Examiner's concerns, vehicles were able
41 to move through the intersection to be counted to establish the CLV count that was
42 calculated. The study appropriately concluded that, when adding in background
43 developments and in the proposed development traffic, the Georgia Avenue/Randolph
44 Road intersection required certain mitigation. Mr. Headburg recommended –



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1 improvements as part of the study, improvements that had been approved by the
2 Planning Board, State Highway Administration technical staff, and the Hearing
3 Examiner as being feasible and reasonably probable of fruition. The court mandated
4 tests. Mr. Headburg also addressed the grade separated interchange that, as the
5 Council well knows, has been deemed the Council's number one priority for the state
6 road projects in the County and would do an even better job of mitigating traffic impacts
7 at that intersection. It is curious that the Hearing Examiner's Report pointed out two
8 other examples where she states it would be patently unfair not to follow rules,
9 procedures, laws on the books. The Report states, quote, absent a statutory or
10 regulatory mandate to do so, it strikes the Hearing Examiner as unfair to deny or defer
11 these proposed rezonings for failure to address an issue, in that case the air quality
12 issue, that is not typically part of a zoning case and was not raised by technical staff or
13 the Planning Board. In other instance, in reference to the suggestion that development
14 be delayed until a study regarding the Georgia Avenue corridor is completed, the
15 Hearing Examiner found that while the Council could choose to stop development along
16 Georgia Avenue while the study is completed, fairness would call for doing so in a
17 comprehensive way applicable to all proposed developments, not just to individual
18 zoning cases. The same applies here. If the CLV methodology is questioned, it
19 shouldn't be via these two local map amendments. The Hearing Examiner's Report
20 correctly advises that the Council standard as articulated by the Maryland Court of
21 Special Appeals for a rezoning case, as it relates to mitigation, is whether the impact
22 would be mitigated by improvements that are reasonably probable of fruition in the
23 foreseeable future. That's the Greater Coleville Case. Now, as far as that test is
24 concerned, I would mention, as the Hearing Examiner found, that the applicant's
25 proposed -- improvements are feasible and reasonably probable of fruition in the
26 foreseeable future. The improvements were analyzed by Mr. Headburg and were found
27 to provide adequate mitigation to the accepted CLV methodology in the LATR
28 guidelines. Let's talk a little bit about the interchange. The Hearing Examiner did not
29 consider the grade separated interchange as being reasonably probable of fruition, but
30 in our opinion, we think she should have, particularly given the momentum for this road
31 project and the funding commitments it has received. The project has received funding
32 for design, partial right-of-way acquisition, and utility relocation. The County committed
33 significant forward funded dollars to this intersection. If you recall \$8.239 million in FY07
34 with another \$6.1 million just in FY08, to be matched by the state's \$6.1 million. I
35 understand that there is an MOU that still needs to be signed so the money can actually
36 be sent forth, but it was committed. And there has been reports that this project is right
37 for funding and supported by the governor. The tested zoning is not reasonably
38 imminent or practically done. The Hearing Examiner states that, quote, it is inconsistent
39 with County policy and therefore inappropriate for the Council to rely on an unfunded
40 improvement at a zoning case. Yet, the Hearing Examiner also states that the record in
41 this case strongly suggests, or suggests strongly, that there is considerable momentum
42 behind the grade separated interchange and that it is more likely to go forward than not.
43 In the Greater Coleville Case, the Appeals Court reversed the lower court because the
44 Court found that the traffic improvements were not reasonably imminent, a more



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1 restrictive test, instead of whether the improvements were reasonably probable of
2 fruition. The lower court erred in applying a more stringent test. The Court of Special
3 Appeals also concluded that the -- the development must address a mandatory
4 subsequent review regarding public facilities. Like in this matter, subdivision review. The
5 reasonably probable of fruition test essentially becomes reasonably certain based on
6 subsequent reviews where an applicant is unable to move forward until the review and
7 approval have actually occurred. Thus absolute proof of transportation network capacity
8 to handle development in zoning is not required. There is precedent in the County to
9 conclude that improvements are reasonably probable of fruition even if they are not fully
10 funded. I believe the Rockledge Connector may have been an example. As far as
11 binding elements on the plan are concerned, we have binding elements on the plan to
12 assure that not only will traffic be retested, but that also stage two will not be able to
13 move forward until this intersection is addressed. This provides even greater
14 assurances on this issue. I want to bring up the alternative review procedure. We
15 believe it is also worth mentioning that, during the hearing, the applicant expressed that
16 it is interested in, and indicated that it may pursue the alternative review procedure for
17 Metro Station Policy Areas. At this stage of the process, the applicant did not commit to
18 the alternative review procedure because other mitigation strategies are available that
19 would allow the applicant to move forward to subdivision. However, with the Council's
20 passage of the new growth policy and its focus on non-auto related mitigation.

21
22 Francoise Carrier,
23 Interrupt there. We can't talk about the new growth policy. It's not on the record.
24

25 Steven Robins,
26 Okay. The applicant is strongly committed to implementing a pedestrian friendly and
27 transit oriented development and this could include the use of the alternative review
28 procedure. The Hearing Examiner suggested that perhaps a queuing analysis should be
29 prepared as part of the remand. The applicant addressed this issue by submitting an e-
30 mail from Rick Hawthorn, at that time Chief of Transportation Planning Division. Mr.
31 Hawthorn confirmed that a queuing analysis was not required as part of this LATR effort
32 and that it is not conducted when improvements are proposed that would mitigate traffic
33 impacts like those specifically proposed in the applications. Queuing is more relevant
34 when LATR reveals failing conditions and there are no physical improvements that can
35 be made to address these failing conditions. In such instances, a queuing analysis gives
36 the applicant yet another chance to address the traffic situation and possibly move
37 forward, even when physical improvements are not possible or desirable. Thus queuing
38 was determined not to be needed in this case because physical improvements are
39 included that would mitigate the traffic impacts articulated in the guidelines.
40 Furthermore, additional capacity by improvements at the Georgia Avenue/Randolph
41 Road intersection will facilitate traffic flow through the other intersections as well. The
42 Hearing Examiner's Report confirms that the Council need not remand the application
43 because there is substantial probative evidence to grant the rezoning applications.
44 Patrick?



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1 Patrick O'Neil,

2 Thank you, Steve. Good afternoon members of the County Council. This portion of our
3 presentation would deal with the other issue in this case that the Council wanted to hear
4 about, and that is compatibility. Throughout the hearings, our experts provided
5 compelling testimony that the Glenmont Metro Center complies with the sector plan and
6 meets or exceeds all of the standards and requirements of the TSR Zone and the
7 standards for development plans as contained in the zoning ordinance, including, but
8 not limited to, compatibility, which for purposes of this discussion also includes
9 pedestrian safety. The applicant heard and responded to concerns voiced by the
10 surrounding community that the development should seek to be physically and culturally
11 compatible with existing neighborhoods. In evaluating compatibility and its impact, it is
12 critically important to take into consideration the sector plan. The sector plan set a vision
13 for the property and contained guidelines, objectives, and goals, all of which were
14 thoroughly discussed by Mr. Yang and the applicant's other experts in the case. You
15 can see from the exhibit entitled Sector Plan Recommendations, in comparison to the
16 development plan and the contextual site plan that you have in front of you, that our
17 plan closely follows the sector plan's vision and physical layout. The applicant made
18 significant changes to the development plan as the result of negotiations and
19 compromise with those community members that had a sincere desire to make the plan
20 work. These included reducing heights, agreeing to certain design principles, setbacks
21 and committing to certain unit counts, and the like. The applicant contacted virtually all
22 of the community associations in the area and hosted a number of meetings with those
23 community associations interested in meeting. Throughout the process, the applicant
24 held meetings with civic leaders and, thereafter, invited over 5,000 individuals living in
25 the community to an open house at the Book Side Garden Center to discuss the plan.
26 Over the course of the review period, the applicant also made multiple presentations to
27 the Mid-County Citizens Advisory Board and met on many occasions with a number of
28 the individuals that appeared before the Hearing Examiner. The community outreach
29 effort did not end when the hearings began. People's Counsel, Martin Klauber,
30 conducted a meeting on June 21, 2007 that was attended by the applicant and virtually
31 all of the individuals that participated in the hearing. The meeting generated excellent
32 dialogue and resulted in the applicant modifying its development plan, revising and
33 adding binding elements, and addressing virtually all the concerns raised at the
34 meeting. The Hearing Examiner received much testimony concerning compatibility. Her
35 Report devotes at least 68 of the 189 pages to issues, to these issues, and ultimately
36 concludes that the building types, uses, and arrangements respect and compliment the
37 existing neighborhood. The Hearing Examiner notes that, quote, several community
38 members argued that the proposed development would not be compatible with the
39 surrounding area because it would introduce new elements to Glenmont, taller
40 buildings, structures built closer together in a more urban form, higher population
41 density, and more expensive housing. A few participants were concerned with cultural
42 differences and how the new and old Glenmont would integrate. The applicant spent
43 much time working with the community, and thereafter, addressing this issue via the
44



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1 expert testimony of Mr. Yang, --, and shine. The Hearing Examiner's response to the
2 community's compatibility concerns is worth repeating. Quote, these elements, that is
3 height, setback, and density, are precisely what the sector plan recommended in an
4 effort to revitalize an area that has seen little reinvestment in recent decades and to
5 take full advantage of the substantial public investment in the Metro. The Hearing
6 Examiner also acknowledges that this represents a change for Glenmont, but accurately
7 asserts that this change is driven by a policy decision that the Council and the Planning
8 Board made when the sector plan was approved and adopted. Finally, the Hearing
9 Examiner points out that the height limits the community representatives succeeded in
10 negotiating with the applicant, and the extensive textural binding elements, and binding
11 design principles, the record provides a high level of assurance that the final plan for the
12 subject site will, if the project is allowed to go forward, be an asset for the existing
13 community as well as new residents. The Hearing Examiner addressed the compatibility
14 issue in the sector plan and unequivocally found that the applications were compatible
15 with the surrounding area and would not adversely affect or impact the community in
16 any negative way. They also would be in the public interest. In concluding both Steve
17 and my portion of the presentation, we point out that these applications propose exactly
18 the right development for exactly the right place as envisioned by the sector plan and
19 the County Council. These applications also fit into the growth policy visions just
20 enacted by the Council, the prior vision as well, on how to further transit oriented
21 development. The Council also needs to embrace fundamental fairness. The Hearing
22 Examiner's Report fully acknowledges that her recommendation is a departure from
23 well-established principles regarding the evaluation of traffic for local map amendments.
24 This is not the right case to make that departure, as this development proposal
25 unquestionably is a most desirable type of development sought by the County. Again,
26 the Hearing Examiner states the record contains substantial probative evidence that
27 would support a decision to grant the request of rezonings without the need for a
28 remand. Changing the rules at this point is troubling, particularly when the application
29 has met its burden for the applications to be approved without a remand as articulated
30 by the Hearing Examiner. The subdivision and site plan process offer ample protection,
31 after zoning, to assure that the development will not proceed unless public facilities are
32 adequate. Thank you for your consideration regarding this matter and we're happy to
33 answer any questions that the Council may have either now or at the end.

34
35 Council President Knapp,
36 Thank you. Madam Clerk, how much time?

37
38 Council Clerk,
39 We have seven minutes 40 seconds remaining.

40
41 Council President Knapp,
42 Of the 30 or of their 23?

43
44 Council Clerk,



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1 For rebuttal, seven minutes 40 seconds remaining.

2
3 Council President Knapp,
4 Okay. Mr. Ross has two minutes and 40 seconds remaining. Five minutes for rebuttal.

5
6 Council Clerk,
7 Alright.

8
9 Council President Knapp,
10 There's 7:40 left. It was originally two minutes and five for rebuttal. Would you like to do
11 2:40 for Mr. Ross or keep 5:40 for rebuttal. You guys have got a lot of --.

12
13 Steven Robins,
14 Why don't we, yeah, five minutes for rebuttal.

15
16 Council President Knapp,
17 Okay.

18
19 Steven Robins,
20 I assume if he doesn't use the 40 seconds, we'll be happy to take it.

21
22 Ben Ross,
23 Hi. I'm Ben Ross of 4710 Bethesda Avenue in Bethesda. I'm speaking as President of
24 the Action Committee for Transit. The Council and your predecessors, through twists
25 and turns of changes of the Council, have long-recognized that transit oriented
26 development is essential for our County. Now, this project is exactly what we have all
27 agreed we need. But I'm very, very troubled by one core statement in the Hearing
28 Examiner's Report, which is really at the heart of her decision. It has to do with the
29 trade-offs between promoting transit use and keeping traffic around, keeping traffic
30 moving around the Metro Station. The Council, for years, has wrestled with that issue
31 because it is genuinely a really hard issue. And the result of all of this wrestling is a set
32 of rules. And the Hearing Examiner recognizes that this project followed those rules.
33 The rules represent the trade-off that the Council has made. Under these rules
34 developers can make improvements to help drivers, improvements to help transit riders
35 and improvements to help pedestrians and the developer in this case offered a package
36 of improvements that addressed all three. The way the Council set up the system is that
37 there is a formula. So many, so many bus shelters give as much improvement for transit
38 riders as one lane gives for drivers. The Hearing Examiner didn't accept that rule. What
39 the Hearing Examiner says in her Report is that improvements don't count unless they
40 benefit drivers. It says that this project could be a benefit, is a benefit that the amenities
41 that are offered, the improvements are certainly a benefit for pedestrians and transit
42 riders but it's not a benefit for the community unless it helps drivers. It says it right in the
43 Report. That is the kind of thinking that the Council rejected when it set up these rules
44 that say that improvements should be for all of our County's residents and we think that



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1 you should continue to reject that thinking. The government should operate for the
2 benefit of everyone, not just those people who want to drive and have the means and
3 the good health to do it. Thank you.

4
5 Council President Knapp,

6 Okay. We now turn to those supporting the Hearing Examiner's Recommendation. And
7 we have, one, two, three, four, five, six, six different speakers presenting. Since we can't
8 fit everyone at the table all at the same time we're going to go in two groups. The first
9 group will include Mike McAteer, Susan Johnson, Vicki Vergagni and Max Bronstein.

10
11 Steven Robins,
12 You want us to – .

13
14 Council President Knapp,
15 Yep.

16
17 Steven Robins,
18 Okay.

19
20 Council President Knapp,
21 We have got to clear out so we can get the other team in.

22
23 Steven Robins,
24 No problem. Okay. [multiple voices].

25
26 Council President Knapp,
27 Okay. Mr. McAteer has seven minutes. Ms. Johnson has one minute. Ms. Vergagni has
28 two minutes. And Mr. Bronstein has one minute and 15 seconds. And then we have two
29 more speakers that will follow the first panel. So I'll make sure that the Clerk is ready.
30 Madam Clerk?

31
32 Council Clerk,
33 Okay.

34
35 Council President Knapp,
36 Okay. Mr. McAteer.

37
38 Michael McAteer,
39 My name is Michael McAteer, I'm Vice-President of the Glenmont Civic Association. I
40 served on the Glenmont Sector Plan Committee between 1994 and 1997. When Metro
41 was planning the Glenmont Station, our Association worked to have a west side
42 entrance built, though none was planned. It was built, thank goodness. Glenmont now
43 has a petition signed by 900 people, including virtually all local businesses, to oppose a
44 highway interchange at Georgia Avenue and Randolph Road. We also oppose new turn



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lanes because these will further endanger pedestrians. Our Association supports the Hearing Examiner's Recommendation to remand the application to rezone 30 acres at Privacy World. The Hearing Examiner said the applicant failed to show that the proposed development would not have an adverse impact on local traffic and because the applicant failed to adequately assess traffic, its recommendations for traffic mitigation are faulty. The Hearing Examiner said that if the proposed Glenmont Metro Center with 1550 housing units plus commercial area is built, additional traffic will have an adverse impact on the intersection of Georgia Avenue and Randolph Road and the surrounding community. To support the Recommendation of the Examiner, I will discuss three aspects of Glenmont: first, current traffic conditions, second, the remarkable increase of Metro riders in Glenmont, and third, I will outline several ways to reduce automobile traffic. First, I will say Glenmont has become ground zero for cars. The Maryland State Highway Administration says 85,500 cars drive through the Georgia Avenue/Randolph Road intersection each day. This does not include cars which don't use that intersection. There are 1,600 daily car trips to the Glenmont Metro Kiss and Ride area. There are 4,000 parking places in our community, in the East Side Metro Garage, in the Glenmont Shopping Center and in commercial areas. Also, the County plan to build a second garage for 1,200 cars. All of this occurs along three blocks on Georgia Avenue from Randolph Road to the Metro Station. Because of this traffic, during the morning and evening rush hours, about eight hours in total, local residents are prevented from driving on major roads. If they do drive, they must go through residential neighborhoods. One of the concepts we discussed on the Sector Plan Committee was that Glenmont would be a transit center. In fact, it far surpassed expectations. The daily number of Metro riders coming and going is now over 12,000 and this number grows at over 6% each year. People drive, ride on 12 buses, and walk to Metro. People walk to Metro on much of the west side because there are no unsafe roads to cross. On the west side, many households double up and triple up so they may live near Metro. They also double or even triple house sizes. Unfortunately, neither the County, State, nor Metro knows the number of walkers. My experience has been that staff can tell you how many cars there are in Glenmont but not the number of walkers. In other areas south of Randolph Road and east of Georgia Avenue, roads are barriers to pedestrians walking to Metro or the commercial area. Barrier roads are Georgia Avenue, Randolph Road, Layhill Road and Glenallan Avenue. If these roads were not barriers, I believe you could increase the number of Metro riders substantially. According to the Montgomery County Police, the larger Glenmont area suffers many pedestrian fatalities.

Francoise Carrier,
Mr. McAteer, I'm not sure that that is in the record.

Michael McAteer,
About the fatalities?

Francoise Carrier,



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1 Yeah.

2
3 Michael McAteer,
4 Oh yeah it is.

5
6 Francoise Carrier,
7 Are you sure?

8
9 Michael McAteer,
10 I'm sure of that.

11
12 Francoise Carrier,
13 You said it before?

14
15 Michael McAteer,
16 I said it before.

17
18 Francoise Carrier,
19 Alright.

20
21 Michael McAteer,
22 In 2005.

23
24 Francoise Carrier,
25 It's a big record.

26
27 Michael McAteer,
28 In 2005, there were five fatal pedestrian/automobile collisions. In 2006, there were two
29 fatalities. And as of July 2007, there have been two fatalities. A major premise of the
30 sector plan was that Glenmont, being a residential area that surrounds a Metro Station
31 and shopping area, should be a community that walks. Great amounts of time and effort
32 were spent on designing walkways within and between neighborhoods, and especially
33 between neighborhoods in the central area where the Metro Station and commercial
34 area are located. But the walking plan essentially failed, not because people don't want
35 to walk, but because it is not safe. In Glenmont people drive three blocks to buy a loaf of
36 bread. They even drive to Metro and park all day. Unsafe walking conditions will
37 adversely affect the new development in all Glenmont because new residents will soon
38 discover that it is not safe to walk to the shopping center or Metro. They will drive just as
39 we do. To accommodate the plan development in new cars, we need to reduce traffic,
40 but we need transit solutions, not roadway solutions. We must reduce traffic by at least
41 the 3,000 new cars, I believe, the new residents and shoppers will drive in Glenmont.
42 Here are some suggestions. Build the already approved Georgia Avenue bus way. This
43 would operate between Olney and the Glenmont Metro Station. Build a light rail, modern
44 streetcar along Randolph Road to connect to the Glenmont Metro Station. The other



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1 evening I noted on TV that Arlington and Fairfax are both actively working to have
2 modern fast streetcar transit within a few years. Build safe pedestrian walkways to the
3 Glenmont Metro Station and commercial area. For example, narrow roads at dangerous
4 crossing points. And, provide better access to Glenmont Metro with a neighborhood
5 shuttle. In the hearing on the application, there was much discussion about the roads
6 becoming clogged in our community, but I didn't ask the right questions, however, the
7 Hearing Examiner apparently figured out that this traffic would drive through the
8 surrounding residential areas. I can tell you we already have this problem. I urge you to
9 remand the zoning request so the applicant may find ways to mitigate the additional
10 traffic the development will bring to Glenmont. We need transit solutions, not roadway
11 solutions. Thank you.

12
13 Council President Knapp,
14 Thank you. How much time is remaining?

15
16 Council Clerk,
17 Used six minutes, 15 seconds.

18
19 Council President Knapp,
20 Okay. Ms. Johnson, you have one minute.

21
22 Susan Johnson,
23 Good afternoon ladies and gentlemen. I serve as President of the Layhill South Citizens
24 Association which is located very close to the subject development. And I speak today
25 in support of this zoning matter being remanded to the Hearing Examiner because there
26 are major traffic problems that have not been satisfactorily addressed by the
27 developers. The Critical Lane Volume analysis and Local Area Transportation Review of
28 traffic does not realistically reflect the reality of the constant delays and queuing
29 problems at the Georgia Avenue and Randolph Road intersection, which affect those of
30 us who live there every single day. Proposed mitigation by the developers of two right
31 lanes at Georgia and Randolph will probably do little to resolve the major problems
32 there. So much is proposed for this area. A new parking garage by Metro, a fire station
33 that will have to have moved, and the unfunded grade separation which we have all
34 been talking about. With the major funding problems that are now so prevalent in the
35 state and County, I believe it is unknown as to when that will be felt. I am ceding much
36 of my time to Richard Kauffunger who will address the traffic issues in more detail.

37
38 Council President Knapp,
39 Time has expired.

40
41 Susan Johnson,
42 Thank you.

43
44 Council Clerk,



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1 I'm trying.

2
3 Council President Knapp,
4 Okay. That's right. We're going to give you a red flag. It's kind of like in the NFL.
5 [laughter].

6
7 Council Clerk,
8 I'm just going to yell.

9
10 Council President Knapp,
11 Ms. Vergagni, you have two minutes.

12
13 Vicki Vergagni,
14 Glen Way Gardens is a condominium community with 600 plus residents located
15 catty-corner to the proposed development at Layhill and Glenallan. Our community
16 supports redevelopment, in concept, however, we oppose the aforementioned plans
17 and support the remand of these zoning cases. First, we oppose the development plans
18 due to incompatibility. It will tower and isolate. The proposed development will tower
19 over the existing community. The development plan calls for 55 to 85 foot high
20 structures on the highest elevation in the immediate area. Adjacent residences are up to
21 30 feet high. Our residents do not want to live across the street from structures that
22 tower over them by 60 feet. The proposed development will isolate itself. Not only do
23 the proposed structures form a wall, but the proposed residents and retail are
24 anticipated to be upscale in a community of modest, single-family homes, town homes
25 and garden apartments. The key proposed retailers are competitive rather than
26 complimentary of shopping just a short walk away and the proposed residents would not
27 have to leave their complex to meet their basic needs. Thus, the proposed development
28 would encourage isolationism instead of integration with Glenmont. Second, we oppose
29 the development based on traffic congestion. Eighty-five percent of the residents in the
30 existing community do not use public transportation because it does not take them
31 where they need to go. This statistic is consistent with the developer's expectation of
32 proposed residents. This means that more traffic from 1,550 new homes and potential
33 non-resident shoppers. The primary traffic issue for us is the four intersections located
34 immediately adjacent to the development, where rush hour queues require drivers to sit
35 through multiple lights to enter an intersection. The developer's measurements do not
36 reflect this reality. Further, some road design is blind and results regularly in personal
37 injury and property damage. There is no reasonable and safe pedestrian walkway to the
38 Glenmont Station. The developers offered no workable alternatives to address traffic
39 issues that will only be exacerbated by development. The mere presence of public
40 transportation does not make a community.

41
42 Council Clerk,
43 Time.



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1 Vicki Vergagni,
2 Right for smart growth. Thank you.

3
4 Council President Knapp,
5 Thank you. Mr. Bronstein, you have one minute and 15 seconds.

6
7 Max Bronstein,
8 Thank you. I'm Max Bronstein, speaking for the Strathmore Belpre Civic Association.
9 We support the Hearing Examiner's Recommendation to remand zoning application G-
10 862 and 863 back before the Hearing Examiner. We agree that the applicant needs to
11 present much more evidence that their proposed mitigation, and any additional
12 mitigations they might offer, will prevent additional adverse effects on traffic and
13 congestion in the surrounding area. We also agree there needs to be further
14 examination of the issue of compatibility of the proposed development with the
15 surrounding neighborhood. In the extended hearings before the Hearing Examiner, it
16 must be noted that the applicant's numerous attorneys and experts, 11 in all, consumed
17 in excess of three days of the four full days of hearings. Despite all the time they took,
18 their case was extremely weak and very unconvincing. We have always done it that
19 way, is not a sufficient basis to support a flawed transportation test. We feel the Hearing
20 Examiner is being exceptionally gracious in allowing the applicant further opportunity.

21
22 Council Clerk,
23 Time.

24
25 Max Bronstein,
26 To make their case. Thank you.

27
28 Council President Knapp,
29 Thank you. Now we have our next panel who is Ann Ambler and Dick Kauffunger. Ms.
30 Ambler speaks first and has six minutes.

31
32 Ann Ambler,
33 Good afternoon. And it is good to see you again. My name is Ann ambler. I'm speaking
34 as an individual who has lived about a mile from the intersection of Georgia Avenue and
35 Randolph Road for the last 37 years. I shop, bank, and catch Metro at Glenmont. And
36 increasingly, I walk there for these activities. It is an unpleasant, somewhat hazardous
37 walk because of the volume, speed, and smell of traffic. The Hearing Examiner is
38 correct in her assessment that the applicant's traffic tests understate current levels of
39 congestion in Glenmont. I support her remand of this application because it will give the
40 applicant the opportunity to offer a transit solution to the project's impact on this
41 mobility-impaired area. A solution that contributes to, rather than undercuts, the
42 County's goals of smart growth, walkable communities, and reduction of greenhouse
43 gas emissions. Why does the project, despite having many aspects of smart growth,
44 undercut smart growth goals? Because, in adding more than 1,000 vehicles to this



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1 concentrated area, and attempting to mitigate their impact by expanding road capacity,
2 it makes life yet more unpleasant and dangerous for pedestrians and increases
3 commuter miles driven, the very last thing we should do, given our urgent need to
4 reduce greenhouse gas emissions. Mr. McAteer has explained why, despite proximity to
5 Metro, many Glenmont Metro Center residents will drive, both to work and for routine
6 shopping needs. In giving only a 15% parking reduction for the project, the County
7 appears to agree that 85% of residents will use cars. A second source of additional
8 drivers is commuters. The proposed mitigation for congestion at Georgia Avenue and
9 Randolph Road is to add either additional turn lanes or a money contribution to a grade
10 separated interchange, but adding road capacity always induces additional vehicles.
11 People commute from farther away and choose driving over other transport. Expanding
12 this already hazardous intersection further reduces the likelihood that people will choose
13 to walk. The safety threat is very real. According to police records from 2005 to 2007,
14 nine pedestrians lost their lives to cars in the Glenmont area. The Hearing Examiner
15 notes that since the grade separated interchange is not funded within four years, the
16 applicant's fallback mitigation of at grade turn lanes is what we are considering. But, we
17 who live here must consider both and both result in a wider Georgia Avenue and faster
18 traffic. A Randolph Road underpass would signal to drivers that highway speeds are
19 appropriate, while pedestrians crossing Georgia Avenue would face nine lanes of traffic.
20 The additional at grade turn lanes on Georgia Avenue would give us nine lanes to cross
21 south of Randolph, eight lanes on the north side. Remember that traffic is only slow
22 during rush hours. Why, in this enlightened energy conscious era, is our main concern
23 still moving cars regardless of how the ever wider expanses of concrete place a life
24 threatening barrier between people's homes and where they need to go to use transit
25 and shop for groceries. Turning to emissions, we know we face a crisis of epic
26 proportions in global warming and must be on track by 2015 to so reduce our
27 greenhouse gas emissions that we achieve at least an 80% reduction from 2006 levels
28 by 2050. Our County and State Governments have pledged to do just that. Yet, the
29 Council of Government's most optimistic forecast is a 16% increase in the Metro
30 region's emissions by 2030. It calls for reducing the miles we drive because the
31 transportation sector produces a significant 34 to 40% of Maryland's CO2 emissions,
32 rising probably to 40% by 2030. Clearly, we must shift the incentives away from
33 individual vehicle use and we must start now. Providing effective transit with safe,
34 pleasant walking routes to access it is an essential part of the solution. Long term, we
35 need a streetcar on a dedicated right-of-way from Olney to the Silver Spring Transit
36 Center and eventually into Washington as a part of network of street cars on our major
37 arterials, including Randolph Road. But, for this project we need at least an express bus
38 way from Olney to Glenmont Metro to offset the additional vehicles Glenmont Metro
39 Center will bring. An interim very economic bus way could take an existing northbound
40 lane to go south in the morning and an existing southbound lane to go north in the
41 evening. Why should mitigation funds go toward expanding road capacity that undercuts
42 County goals when that same money could go toward building the rapid transit network
43 critical to the County's long term prosperity? Recall that the Glenmont Sector Plan on
44 page 82 lists transit as possible mitigation. This should not be ignored. Will we let



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1 Arlington run streetcar circles around us? Glenmont Metro Center can be an asset to
2 the community and contribute to the overall redevelopment necessary to address global
3 climate change, while accommodating a growing population, but that will depend on
4 whether it results in more cars and more emissions or more transit, biking and walking.
5 Public health and the health of the planet demand it. Please remand the application for
6 a transit mitigation. Thank you very much.

7
8 Council President Knapp,
9 Thank you very much. How much time do we have remaining?

10
11 Council Clerk,
12 Thirteen minutes and 45 seconds.

13
14 Council President Knapp,
15 Okay. And of that 13:45, Mr. Kauffunger has 12:45.

16
17 Richard Kauffunger,
18 Okay. Thank you.

19
20 Council President Knapp,
21 Oh, that's.

22
23 Richard Kauffunger,
24 Welcome back, George and Marilyn.

25
26 Council President Knapp,
27 Okay. Oh okay.

28
29 Richard Kauffunger,
30 May this be a healthy and great year for the two of you and for all of the Council. For the
31 record, my name is Richard Kauffunger. I'm a long term activist on zoning and
32 transportation issues here in the County. Few would argue against the maxim that the
33 protection and promotion of the health, safety, and welfare of the general public are the
34 paramount goals and purposes of government. These invaluable protections form the
35 basis of the police powers and provided the legal foundation upon which the United
36 States Supreme Court upheld the concept of zoning in Euclid verses Ambler Realty in
37 1926. With this in mind, when the State of Maryland delegated zoning authority to the
38 Council in the Regional District Act, the state set the protection and promotion of the
39 health, safety, morals, comfort, and welfare of the inhabitants of the district as the basic
40 requirement in the exercise of delegated power. I'm here today to support the Hearing
41 Examiner's finding that the evidence, with regards to traffic impacts, is insufficient to
42 meet these standards for zoning approval delegated to the County by the Regional
43 District Act. There was extensive testimony by area residents on the problems of traffic
44 congestion and we heard it again today. And I'd like to just turn to some photographs



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1 that are given to each of you, recognizing that a picture is worth a thousand words, I
2 want to bring home the reality of what happens in the Glenmont area. On the page of
3 Circle A, you see the intersection of Layhill Road going, feeding into Georgia Avenue.
4 What you witness here is, although the traffic light is green, is the fact that there is such
5 spillback from the Georgia/Randolph intersection that the cars can't get off of Layhill
6 Road, and when you see the amber light, you'll see that there are cars that manipulate
7 themselves trying to get into a position where they can make it out onto Georgia
8 Avenue. This is the reason why the traffic counts are, never increased over the last 15
9 years. On circle B, I wanted to show how far these spillbacks go, going back to the
10 intersection of Layhill and Glenallan, you'll see that the spillback goes all the way past
11 Glenallan. In fact, during the peak hours, it goes back to the entrance to the Metro train
12 yards. This is a substantial delay, as well as congestion, that wreaks all kind of havoc.
13 On circle C, you see the same kind of impacts on traffic flow on Randolph Road. This is
14 westbound in the a.m. peak hour. We're looking at Randolph and Middle Vale Lane.
15 Just so you understand where this is, this is out in front of Kennedy High School. This is
16 a long, long way. This is three signalized intersections from Georgia and Randolph. And
17 many days, this backup goes all the way back to the Tivoli Heights Boulevard and on
18 occasions, it goes all the way back to Kemp Mill Road.

19
20 Francoise Carrier,
21 I don't think that is in the record, Mr. Kauffunger.

22
23 Richard Kauffunger,
24 These, what these descriptions?

25
26 Francoise Carrier,
27 The photos are, but I think you're going a little farther in your description.

28
29 Richard Kauffunger,
30 Okay.

31
32 Francoise Carrier,
33 Of where the traffic goes.

34
35 Richard Kauffunger,
36 Okay.

37
38 Francoise Carrier,
39 Than you did on the record.

40
41 Richard Kauffunger,
42 Okay. Okay. The next one is just to show Georgia Avenue northbound in the p.m. peak
43 hour. What I did is, I went to the corner of Georgia near Lindale Street and what I did is,
44 I took a picture looking north and I immediately turned around and took a picture



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1 southbound. But again, it shows you the tremendous backups through signalized
2 intersections that occur as a result of the congestion. Going back to my testimony, these
3 demonstrate the danger and injury to the health, safety, and welfare of the public due to
4 the crisis in traffic capacity at the Georgia/Randolph intersection. This exists today, even
5 before the addition of background traffic from the Indian Spring redevelopment, and this
6 proposed new development. The danger and injury comes in many forms. Excessive
7 delay for thousands of drivers through the, trying to make it through the intersection.
8 Evidence was supplied into the record that these delays can be seven and a half to ten
9 minutes just trying to go through the intersection. It has resulted in increased accidents,
10 increased air pollution from idling vehicles, increased difficulty and danger for
11 pedestrians trying to cross jammed intersections, increased time for emergency
12 vehicles to get to fires, seriously ill people, and other emergencies. Just to mention a
13 few. In his letter requesting Oral Argument and today, the applicant argues that the
14 Council should ignore this evidence of traffic crisis because only Critical Lane Volume is
15 mandated to be evaluated for traffic impacts. He misleads the Council. The adopted
16 policy contained in the Local Area Transportation Review guidelines pertains to traffic
17 review at time of subdivision, not zoning. There is no legislative policy that mandates
18 standards and methodologies to assess whether a proposed rezoning is in the public
19 interest based on adverse impacts on the local network. And incidentally, Jeff Zyontz's
20 recent memo concurs with this view. The applicant's arguments asking you to rely solely
21 on CLV flies in the face of well recognized weaknesses of this technique. I'm going to
22 try and paraphrase things that were given in testimony. And this is viewpoint of, first of
23 all, Dr. Ganglin Chang of the University of Maryland. He teaches transportation
24 engineering at the University. And he refers to Critical Lane Volume technique as being
25 very low tech, very primitive. It should only be used for isolated intersections. It cannot
26 be used for intersections at near capacity. Most states use highway capacity
27 approaches or simulations like --. Phil Tarnoff, also is over at the University of Maryland;
28 he runs the Center for Advanced Transportation Technology, he describes CLV as
29 being very dangerous, points out that it only measures traffic that the signals let
30 through, not demand. We must simulate the network on computers. And last but not
31 least, I have quotes from my conversations with Neil Peterson of the State Highway
32 Administration. He agrees that there are severe limitations to CLV. And the analysis of
33 unstable, over capacity intersections is very unreliable. That's what we have at Georgia
34 and Randolph . And I've lost my place. At any rate, I should point out that a number of
35 these serious flaws were confirmed under cross-examination by Craig Headburg, the
36 applicant's traffic expert. And these are on page 72 of the Hearing Examiner's Report.
37 Mr. Headburg acknowledged that the CLV method only measures conflicting
38 movements that make it through an intersection. That is, it is not a measure of the total
39 volume of traffic going through the intersection. Mr. Headburg also acknowledged that
40 an intersection with heavy congestion may not have a high CLV because the congestion
41 itself limits the number of vehicles that can get through. I really think you should turn to
42 this. Naturally, this depresses the traffic counts. Mr. Headburg also observed that when
43 intersections are closely spaced, like we have at Georgia/Randolph and Georgia/Layhill,
44 there can be backups between them, which again, reduces the traffic counts. Traffic



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1 engineering students are taught about these limitations in their course work, but our
2 LATR guidelines ignore these fatal flaws in our established technique. The Council
3 should understand that the Critical Lane Volume method was established as a design
4 tool helping traffic engineers configure left, right and through lanes at an intersection
5 design in order to maximize throughput. It began to be utilized as a convenient, quick,
6 and dirty proxy for more detailed traffic analysis over 30 years ago, before the crisis
7 congestion we experience across the County today. Our continued misguided reliance
8 on this misused technique has helped to make our region one of the worst congested
9 areas in the nation as reported by U.S. News and World report.

10
11 Francoise Carrier,
12 That's not in the record I don't think.

13
14 Richard Kauffunger,
15 Okay. No, I think it is, but, --.

16
17 Francoise Carrier,
18 Might have cut it.

19
20 Richard Kauffunger,
21 Okay. Then Texas Transportation Institute, [laughter]. At any rate, okay. Now you've
22 heard it sadly. [laughter]. In the applicant's rebuttal to community testimony on page 164
23 of the Hearing Examiner's Report, the applicant uses excerpts from the Indian Springs
24 Subdivision case. The developer's traffic expert in that case stated that my objection to
25 CLV methodology is irrelevant because it is what the County has used for 30 years. But,
26 I believe we must look at traffic congestion as a cancer that is spreading across the
27 County and threatens to kill the quality of life and our economic vitality. And I would
28 argue, just as if cancer threatened a loved one, we should not be looking at the
29 diagnosis and treatment protocols of 30 years ago; we should be looking at the latest
30 technology available. At the very least, we should be looking at computer simulation
31 techniques like -- and Syncro. These models provide a broader picture of traffic
32 operations around networks of roads with multiple intersections and can be calibrated to
33 make them very realistic. The academic community, as well as the staff at the State
34 Highway Administration, is very supportive of these approaches to traffic analysis. But,
35 a fair question from you could be, what do we do now? The Hearing Examiner has
36 provided you with an answer. In recommending that zoning applications G-862 and 863
37 be remanded, Ms. Carrier presents a, states that the applicant would be given the
38 opportunity to provide additional evidence concerning traffic conditions at the
39 intersections using techniques such as queuing and delay analysis. This is what was
40 offered in the LATR on page 21, and attached to the photographs, I have a copy of
41 page 21, and in paragraph A-2, it actually says that when you have CLV's over 1,800,
42 queuing analysis should be done. In presenting my testimony in these applications, I
43 emphasized the tremendous threat that these proposals represent to the viability of the
44 road network through and around Glenmont. The application of the CLV technology is



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1 too inexact with too many potential flaws. The absurd conclusion of the CLV analysis in
2 this case, which shows that the additional residential and retail development in these
3 zonings will lower the CLV at Georgia/Randolph compared to the CLV results from the
4 earlier Indian Springs study, is proof. Yes, they claim that it is going to get lower with
5 more development. The County cannot risk this kind of analysis because we can't risk
6 placing a choke point in the north/south, east/west traffic in Glenmont. Much more
7 detailed and reliable analysis must be done.

8
9 Council President Knapp,
10 Thank you.

11
12 Richard Kauffunger,
13 And I'm done?

14
15 Council President Knapp,
16 You're done.

17
18 Richard Kauffunger,
19 Okay. Thank you.

20
21 Council President Knapp,
22 And this concludes those supporting the Hearing Examiner's Recommendation. And we
23 now have five minutes of rebuttal for the opponents.

24
25 Unidentified
26 You're driving.

27
28 Unidentified
29 That's the problem.

30
31 Council President Knapp,
32 Okay. So we are, there are five minutes left in rebuttal.

33
34 Steven Robins,
35 The first point I would, thank you. The first point I would make in our rebuttal is that
36 there was absolutely no intention to mislead or deceive or create a false impression.
37 This applicant has followed all rules, guidelines, principals, has worked with the staff
38 and the community on these applications. We have done everything that the staff has
39 requested us to do in terms of evaluating and testing traffic, both for stage one and
40 stage two. And, we have done them in such a way as to follow the LATR guidelines.
41 The LATR guidelines do state on page 1, that zoning cases follow the guidelines, and
42 that is exactly what we did. I would like to make a point about the 15% reduction for
43 proximity to Metro, that was a percentage that was given to us by staff for the traffic
44 study. In reality, there was testimony in the record where Mr. Headburg stated he



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1 thought that that 15% reduction was a very conservative approach, that being directly
2 on top of a Metro would generate significantly more ridership from the development than
3 the 15%, but because of the approach of not using the alternative review procedure at
4 that time, and thus, not being committed to the specific requirements of that process,
5 the percentage was actually depressed somewhat. I would like to make a point about
6 non-auto improvements. I agree with Mr. Ross in that the LATR guidelines allow an
7 applicant to avail itself of non-auto related improvements to get a trip credit, and that's
8 what we had proposed as part of the application. I do think it was a stretch by the
9 Hearing Examiner to suggest that in order to utilize the trip credit provisions, you had to
10 show that you were actually reducing the CLV's at a particular intersection. That
11 proposal was designed to create an, actually an infrastructure improvement for the
12 entire area where, if additional applicants availed itself of that process, you would get a
13 whole capacity network of non-auto related improvements. And these trip credits would
14 create the ability to proceed forward with a portion of the phase one development. The,
15 as far as Mr. Kauffunger's pictures are concerned, we don't disagree that the area is
16 congested. The CLV's at the existing condition, in our transportation study, showed that
17 they are close to the 1,800. However, I would suggest that these pictures do not show
18 that there is in fact a queuing problem at the Georgia/Randolph intersection or that any
19 of the intersections are being blocked when light signals are, in fact, red. It does show
20 that there is congestion, but we are, in fact, in a Metro Station Policy Area where the
21 Council has made a determination that 1,800 is an acceptable level of standard, and I
22 use that word acceptable the way the annual growth policy and the LATR guidelines
23 would use that. There is no testimony in the record, to my knowledge, regarding what
24 Mr. Kauffunger has said about over the last 15 years counts haven't increased.

25
26 Francoise Carrier,

27 You're right Mr. Robins and I should have interrupted at that point. There was .

28
29 Steven Robins,

30 I hope that doesn't come out of my rebuttal time but it is helpful.

31
32 Francoise Carrier,

33 Can I? I should have interrupted and I was just a little bit too slow in figuring out whether
34 it was in the record, but it is true, there was no testimony about 15 years worth of traffic
35 counts on Randolph Road or Georgia Avenue.

36
37 Steven Robins,

38 At all. And, if anything, what was in the record is that with the, with Metro coming
39 forward and actually open and actually operating, the traffic conditions have gotten
40 better in that area. Mr. Kauffunger also suggests that there are delays of seven to ten
41 minutes as reflected by these pictures. The only testimony of record is him telling us
42 that. There is no studies et cetera, that have been done by Mr. Kauffunger to suggest
43 that there are in fact delays of seven to ten minutes. That's just his opinion. Let me turn
44 over to Patrick on some compatibility related comments and then I'll come back to a few



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1 more traffic, oh let just me say one other thing. The traffic counts in the study were
2 never, in Mr. Headburg's study, were never questioned, they were never challenged as
3 being inaccurate or challenged in any other way.

4
5 Patrick O'Neil,

6 Thanks Steve. I want to hit on pedestrian safety just for fear that we might not get
7 enough rebuttal time because that wasn't addressed in our direct testimony. The issue
8 of pedestrian safety was thoroughly discussed during the hearing and also was a focus
9 of the applicant, a major focus of the applicant in the design of the project. Mr. McAteer,
10 in his testimony during the hearings, admitted, as I think many other people who
11 testified today would readily admit, that the pedestrian problems in Glenmont are not the
12 result of the applicant. If anything, as Mr. McAteer conceded during the hearing, the
13 development improves pedestrian, at least in that, pedestrian safety, at least in that
14 area. And this is how we do it. The design is set up to have small blocks with active
15 street escapes.

16
17 Council President Knapp,

18 Thank you very much. And this concludes both support and opposition. I guess what I
19 would ask, since we have so many representatives from those in support that we
20 obviously can't get everyone up at the table at one time, I'm assuming there will be
21 questions on the part of Councilmembers, but at this point, I would, since no one has a
22 perceived unfair advantage to have Patrick and Steve, you guys would step back, and
23 then we could hear from the Hearing Examiner and from our staff and then see what
24 questions Councilmembers have and figure out who we need to have come to the table.
25 Sure. Now turn to – for.

26
27 Francoise Carrier,

28 It's not really in my role to, you know, present an argument.

29
30 Council President Knapp,

31 Right.

32
33 Francoise Carrier,

34 I'm just here to answer your questions about my Report. There are a couple of things
35 that were stated in the Oral Argument that I think I would like to clarify. People
36 sometimes characterize things differently from others. And so there are a couple places
37 where I think characterizations were perhaps a little bit, lacked nuance and perhaps I
38 can help in that regard. I don't think the applicant had any desire to mislead anyone. I
39 think that's an unfortunate choice of words. They were using the rules that are set out
40 before them and I don't think that was an effort to, you know, provide false information
41 or anything. There was, Mr. Robins stated that there was no study to support the notion
42 of a seven to nine minute delay getting through the intersection of Georgia and
43 Randolph. There was no study by a paid consultant. Mr. Kauffunger did testify that he
44 and a friend did their own study. It was two people in cars or walking, we don't have



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1 details about how they did it, but they timed, one of them must have apparently timed
2 the other going from point A through the intersection. So it was not a number that came
3 out of nowhere, it was an informal study, but there was something behind that
4 statement. I also, both the applicant and Mr. Ross seem to take from my statements
5 about the transit credits or the trip credits something that I didn't intend. So perhaps I
6 didn't express myself clearly enough. I didn't intend to say that it doesn't count if it
7 doesn't help the roads. I merely intended to say that I felt the impact of using those trip
8 credits was not fully enough explained for me to understand what things would look like
9 at the end of the day. There was lots of evidence in this case, many people feel transit
10 is exactly what this neighborhood needs, and I'm perfectly willing to be convinced of
11 that. I simply felt that, in this record, it was not flushed out what the result would be of
12 putting in those improvements rather than the roadway improvements. Should the
13 Council decide to follow my Recommendation to remand, there are a couple of changes
14 that need to be made to the Resolution. The principle one is that I refer to the current
15 growth policy several times. When I wrote it, I was referring to the 2003-2005 growth
16 policy which is no longer in effect. So, I believe we would need to change those
17 references to refer to the 2003-2005 growth policy and I also would recommend adding
18 a footnote to explain why the Council would be applying that growth policy instead of the
19 one that was adopted on November 13th. If you'd like, I would be happy to read that
20 footnote to you, so you know what it says.

21
22 Council President Knapp,
23 Okay.

24
25 Francoise Carrier,
26 Based on the effective date provisions in the revision to the growth policy that was
27 adopted on November 13, 2007, the previous 2003-2005 growth policy applies to the
28 present zoning applications which were filed before January 1, 2007. Does the Council,
29 would the Council like me to go through the other more minor changes that I
30 recommend or should we? They don't change the meaning.

31
32 Council President Knapp,
33 Not at this point.

34
35 Francoise Carrier,
36 Okay.

37
38 Council President Knapp,
39 Not where we are. Anything else?

40
41 Francoise Carrier,
42 No. That's all I have for now.

43
44 Council President Knapp,



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1 Okay. Mr. Zyontz.

2
3 Jeff Zyontz,

4 Members of the Council, it is odd that I actually speak to the Council on a local map
5 amendment up until you decide to do something different than the Hearing Examiner
6 recommended. The Council, in this case, has the opportunity to go in any directions that
7 it thinks advisable. It can approve the zoning. It can deny the zoning. It can remand
8 under the conditions that the Hearing Examiner suggested. It can remand under other
9 conditions or more, a wider scope of remand. Those are all of your options. The one
10 thing I will note for everybody, is that I did send to the Council a background policy
11 memo that delineated a lot of the legal issues that were discussed here. Certainly, there
12 is no standard in law specifically on what to apply at local map amendments. There
13 certainly is the need to address those concerns in some manner as part of the
14 compatibility of the development and part of the general public interest. There are more
15 specific findings that are necessary in developing the plans than other requirements, but
16 again, there is an absence of standards, which I suggest is a matter for the Council and
17 legislation. And that is something that you might have the opportunity to take up
18 otherwise. In this case, you just need to recognize that there is sufficient evidence in
19 any direction that you choose to go.

20
21 Council President Knapp,

22 Okay. Thank you. Councilmember Praisner.

23
24 Councilmember Praisner,

25 I have a couple of questions and then I will have a motion. Number one, I want to repeat
26 two things and I actually want our staff to tell me whether I'm correct or not, and then the
27 proponent and opponent of the Hearing Examiner's Recommendation can, if they
28 disagree, please come to the table and correct my comment. If you don't come, I'll
29 assume that you agree with the statements I'm making. Number one, the proposed
30 development does not appear to be, to me to be the issue from a standpoint of the
31 master plan. The question is the timing and requirements associated with that
32 development to meet the traffic impacts and to respond to other issues of compatibility.
33 So it is the design, not the overall intent of development on that site and the timing of
34 that development that is in question. I say that because, although there was significant
35 debate during the master plan process, and I think I can say that, the master plan is
36 fairly clear about the zoning, eventual expectations for this site, although the master
37 plan was adopted a long time ago and does not include some properties as you go out
38 from this. This is a very small Glenmont Sector Plan. And some of the discussion we
39 have had today, to whit Indian Spring development and some of the other congestion, is
40 actually outside the sector plan and therefore causes some confusion, I believe, when
41 we start talking about pieces of this. It is also my perception that the Hearing Examiner,
42 by asking for remand rather than a rejection of what is being proposed, is suggesting
43 improvements that need to be made and analysis that needs to be done, not a totally



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1 different concept. Does anyone disagree with anything I've said so far? Okay. So the
2 issue then becomes.

3
4 Francoise Carrier,
5 I would interject one thing, that there are people who don't like what the sector plan
6 says.

7
8 Councilmember Praisner,
9 Exactly. I was just going to --.

10
11 Francoise Carrier,
12 Nobody thinks --. [multiple speakers].

13
14 Councilmember Praisner,
15 I was going to say that. The controversies, as I recall, from the Glenmont Master Plan
16 were reflected again today in both opposition to the development proposed for this site,
17 in opposition to the grade separated interchange, both in its concept and in its design or
18 proposed design. So those are not unusual, from a human nature perspective, to have
19 folks raise in some way or another. But I want to complement folks, on both sides of the
20 issue, for the fact that, although folks did oppose those pieces, I thought the testimony
21 today was very focused on what the issues are in front of us as opposed to arguing, go
22 change the master plan, which clearly, some folks would like. So, it focuses on, for me,
23 three issues. One is the compatibility issue, which was discussed briefly by Vicki and,
24 who is I guess one of the most immediate neighbors in dealing with the topography of
25 the area and the layout. So, I have a couple of questions Steve, Mr. Robins, for you, if
26 you could come forward. My first question is, you have given us an exhibit. I would like
27 to know what street this exhibit shows. Is this Layhill? Is this Georgia? Is this Glenallan?
28 Okay. Yep.

29
30 Francoise Carrier,
31 Are you referring to the --.

32
33 Councilmember Praisner,
34 Yep, yeah. What is this, which road is this supposed to, proposed to be?

35
36 Unidentified
37 Glenallan.

38
39 Steven Robins,
40 Yeah, that's right. Glenallan.

41
42 Councilmember Praisner,



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1 So, where is it in relationship to the issue of height and topography that was raised by
2 the community as far as, and what is the status of that community concern about being
3 dwarfed or overwhelmed by height?

4
5 Steven Robins,

6 That is a really good question and I appreciate you asking it because I wanted to try to
7 get to it as part of our rebuttal. This is Glenallan Avenue and we spent time with Vicki
8 and her community as well as others trying to understand essentially what the concern
9 was in terms of height in relationship to other communities. -- was not at the table. I'll
10 say that right out. Although, --.

11
12 Councilmember Praisner,
13 That is a rental property.

14
15 Steven Robins,
16 They're a rental property but the owner.

17
18 Councilmember Praisner,
19 And the other property is a condominium.

20
21 Steven Robins,
22 Correct. But Vicki, on behalf of her community was there. And the concern was that the
23 corner of Glenallan, I guess Kevin, this is Kevin Roberts from JBG.

24
25 Kevin Roberts,
26 Kevin Roberts from JBG.

27
28 Steven Robins,
29 If you could just point to the corner of Glenallan and Layhill Road. We really zeroed in
30 on that area.

31
32 Councilmember Praisner,
33 Which is directly across the street.

34
35 Steven Robins,
36 Right.

37
38 Councilmember Praisner,
39 From the community.

40
41 Steven Robins,
42 It is also a high point.

43
44 Councilmember Praisner,



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1 Right. That is why I asked what this intersection is.

2
3 Steven Robins,

4 Right. And in, one of the issues that came up is, during the review at the Planning
5 Commission, there was an issue with this particular parcel, which I believe is identified
6 as parcel F.

7
8 Kevin Roberts,
9 F. Correct.

10
11 Steven Robins,

12 As to whether there should be townhouses there or multifamily. And it was, it would
13 have been an inverse relationship with parcel E, which is the parcel that's back, that
14 borders the WMATA yard. We had a lot of discussion with Glen Way Gardens because
15 they felt that, and others in the community felt that we should try to depress the heights
16 on that particular intersection. Number one, because it's in close proximity to their
17 community. And number two because it happens to be, probably the high point on the
18 property. So we agreed, through the use of Mr. Klauber, and then ultimately through the
19 use of binding elements through the development block analysis, that on that corner,
20 heights would not exceed 50 feet. And that as you, or 65 feet on the corner, but then as
21 you went down Layhill Road, it would be 50 feet. And then the heights would increase
22 as you went down Glenallan and then towards the back of the site. It was of great
23 concern that the heights remained low at that particular intersection. So this shows
24 Glenallan and we have a binding, it's more than really just a binding element, it was a
25 development block analysis that we actually created, that created ranges of heights, it
26 created setbacks, it created the magnitude of the use and the like. Now we show
27 townhouses on that particular corner. There was a debate with technical staff at the
28 Planning Commission as to whether that should maybe be multifamily, more of a, you
29 know, mid-rise type of development. We resisted that. But we understand that the, and
30 the Hearing Examiner, I think, actually reflected it quite well in her Report when she
31 explained what was going on with those particular pieces of parcels and the
32 community's concern about trying to depress the height on that.

33
34 Councilmember Praisner,

35 So is the ultimate proposal now, from a standpoint of the community's concerns, satisfy
36 their concerns or not?

37
38 Steven Robins,

39 I will be honest with you. I thought when we were, had completed the discussions with
40 Mr. Klauber that the idea of agreeing to not exceed certain heights, particularly along
41 Layhill Road, was an agreement that we all had reached. I am a little bit surprised to
42 hear that they, that there is still this sense that someone feels that a 50-foot or a 55-foot
43 building or even a 65-foot building would be looming on the community when you are



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1 talking about 120-foot right of way and then a fairly, and then setbacks on their property
2 as well. And setbacks on ours.

3
4 Councilmember Praisner,
5 Well, but the point.

6
7 Council President Knapp,
8 I just had a quick question.

9
10 Councilmember Praisner,
11 The point relates to the topography.

12
13 Steven Robins,
14 Yeah.

15
16 Councilmember Praisner,
17 So, if they were both flat, which they are not, there is a significant slope, it would be, all
18 things being equal, but this isn't equal.

19
20 Steven Robins,
21 I get it. And that's why we agreed to, we all came, these numbers were not unilaterally
22 created. We all came up with these numbers that were shown on the development block
23 analysis and something that we committed to be held to as part of the zoning case.

24
25 Council President Knapp,
26 If you look at the front page, I just wanted to, for orientation.

27
28 Councilmember Praisner,
29 Sure.

30
31 Council President Knapp,
32 And then back on circle 12 it actually shows the contextual site plan. So, roughly where
33 on this contextual site plan would this picture that we see on the front page be?

34
35 Councilmember Floreen,
36 Circle 12 of what?

37
38 Steven Robins,
39 It's at the corner.

40
41 Council President Knapp,
42 Circle 12 of this --.

43
44 Councilmember Praisner,



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1 Their handout.

2
3 Steven Robins,
4 Georgia and Glenallan.

5
6 Francoise Carrier,
7 Oh, they have circle numbers. I see.

8
9 Councilmember Praisner,
10 Yeah.

11
12 Council President Knapp,
13 So this would actually be the other corner? Okay. Alright. Thank you. I just wanted to --.

14
15 Councilmember Praisner,
16 Okay. The other question I have, related to compatibility, is the issue of creating areas
17 for the community's use, the green space issue, and the community context. In this
18 definition, do you define community as the new development, or do you define
19 community as the broader community?

20
21 Steven Robins,
22 The broader community.

23
24 Councilmember Praisner,
25 I appreciate that but-- .

26
27 Steven Robins,
28 We spent a lot of time --.

29
30 Councilmember Praisner,
31 I just don't see folks from Ms. Johnson's neighborhood finding the location of the green
32 space inviting to them. And I think it does speak to the community's concern about this
33 wall concept between it and the green space. Similar concepts of, perhaps, compatibility
34 for the neighborhood you are building but not with the neighborhood nearby.

35
36 Steven Robins,
37 Can I take a shot at trying to address that?

38
39 Councilmember Praisner,
40 Sure. My question was going to be, please respond.

41
42 Steven Robins,
43 Okay. Thank you. The, and then I'm sure that they may want to chime in, but the open
44 space, the open space between blocks D and B, which is a nice sized community



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1 space, the idea was to try to create that space leading back to what is essentially the re-
2 creation of the stream valley buffer and a beautiful natural park back there. Which right
3 now, you need to understand, right now there are buildings located in that stream valley
4 buffer.

5
6 Councilmember Praisner,
7 No, I understand. I drive it every day.

8
9 Steven Robins,
10 Right. Okay. Well, in the back of the property, you know, deep within the property, there
11 is a piece that will be re-established as a park and a stream valley buffer and the idea
12 was to be able to draw people back and we have, do you have the, we have an exhibit
13 that we asked the Hearing Examiner to pull that shows this concept. But the idea was to
14 be able to create a retail experience along Glenallan Avenue, which we do think that is
15 for way more than just this community, it's for Sue Johnson's community, it's for Vicki
16 Vergagni's community, it's for Mike McAteer, it's for everybody to use and enjoy. And
17 which will have, not only convenience type retail uses, but also restaurants and
18 hopefully nice little outdoor cafes and things of that sort, which will draw people in, get
19 people to be familiar with the space, and treat it as not only our space but their space
20 and bring the new and the old of Glenmont together. The idea, though, was once that
21 people are familiar with the space, was to draw people back, not only into the lawn area
22 that is between those two buildings, but also to draw people back and to enjoy that
23 environmental space that we are really committed to trying to actually create an
24 environmental educational learning experience. If you read the application and some of
25 the testimony that Mr. Roberts and we had, individuals from Bio-Habitat who testified
26 and others, we are trying to create an environment back there with some sort of a trail. It
27 depends upon what Park and Planning would ultimately allow. But with stations and
28 things to draw people in and enjoy the experience.

29
30 Kevin Roberts,
31 If I could jump in, I would like to address your concern about the wall effect. We have
32 actually introduced a new street grid system within the project to create more openings,
33 ins and outs, for people to walk through and access that central space and then to get
34 to the Metro.

35
36 Councilmember Praisner,
37 I actually, I'm glad you raised that, I do not see a street grid. I see one main road going
38 through that starts at Layhill and ends at Georgia and then the side street, if there is
39 any, is more like what exists now in the apartment and townhouse areas. They are more
40 like parking lots for the use and in fact, pedestrians, I mean, drive through folks are
41 prohibited from going through in the morning as cut through because the back up is so
42 great that that is where it is invited. So I don't see this as a grid in my sense of the word.

43
44 Kevin Roberts,



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1 I believe you're looking at the contextual site plan. Is that what you're looking at?

2
3 Councilmember Praisner,
4 Yeah, right.

5
6 Kevin Roberts,
7 So the, I'll just point out on the plan if I can.

8
9 Councilmember Praisner,
10 Sure.

11
12 Kevin Roberts,
13 There is the road that connects Georgia up to Layhill within the street grid system
14 [INAUDIBLE].

15
16 Councilmember Praisner,
17 Right, but my point, and I'd like you to respond, is that grid doesn't appear to me to
18 encourage the broader community to use those roads. They're built for the residents in
19 that area to come in and out and if folks start to use them, they'll probably have no right
20 turn or speed humps or everything else associated with them. So, it's not really a grid of
21 neighborhood roads. It's one road that runs through it which might have limitations on it
22 at some point. And then the access to your residence off of that. And that is what I
23 would like you to respond to.

24
25 Kevin Roberts,
26 Alright. We are surrounded on WMATA on the north so, where it is difficult to punch
27 through a road across that rail storage yard and then to the south we have WMATA as
28 well and that's our constraint. There is a median that runs along Georgia Avenue that
29 precludes us from connecting to the street across going west. So it is, it's just a
30 constraint of the site that it is difficult to create a grid connection to the surrounding
31 area.

32
33 Francoise Carrier,
34 If I may respond. Ms. Praisner, I think that you, it sounds like you are supporting
35 something that the sector plan also called for which was to have the.

36
37 Steven Robins,
38 That is what I was going get at.

39
40 Francoise Carrier,
41 The internal street in this neighborhood be something that would relieve traffic pressure
42 on Glenallan by providing a cut through route. And I think that there is a tension
43 between, for the applicant and for technical staff when they were working with the
44 applicant between creating a community that is pedestrian oriented and walkable and



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1 creating a community that has a nice, straight, not too many bends, cut through street in
2 it. And the way, you know, I don't, I wasn't privy to discussions between technical staff
3 and the applicant but certainly what they came up with was a street that meanders and
4 is more suitable to creating a pedestrian friendly environment than a street that would
5 be conducive to cut through traffic which tends to be faster traffic that doesn't want to
6 meander. So there is, that's the tension that I perceived and I, you know, which way it
7 turns out is.

8
9 Councilmember Praisner,

10 Well, my only problem with that statement is, that makes every grid system that we
11 have not pedestrian friendly. And if that is our criteria, then we will never build a grid
12 system that moves traffic evenly and also is pedestrian friendly. They can't be in conflict
13 with each other. They have to be compatible with each other, otherwise, and maybe
14 we're not not designing more roads in the future, but otherwise we are going to build
15 more cul-de-sacs and meandering roads and probably where folks will argue they do
16 not want sidewalks either.

17
18 Steven Robins,

19 Can I just, one other thing about that road. Because I think the Hearing Examiner
20 described the tension between just trying to do sort of a semi-circular road that would
21 run in conjunction with Glenallan Avenue or Glenallan Road, but also the other issue
22 was, that we were dealing with Environmental Planning staff. And if you look at the last
23 page of the five-page exhibit that has the sector plan proposal on it. It does not
24 accurately, necessarily, and accurately depict the location of the road in relationship to
25 the stream valley buffer. So we had to be very careful about making sure that, staff was
26 not real keen on the idea of the road trying to punch through the stream valley buffer
27 and being hugged against the rear of the site and so we, therefore, it brought the road
28 farther down into the site.

29
30 Councilmember Praisner,
31 Okay.

32
33 Michael McAteer,
34 Can I comment?

35
36 Councilmember Praisner,
37 Fine. I had said either side if they want to comment.

38
39 Michael McAteer,
40 I want to talk about the height for just a second. I don't want the height pushed from
41 Glenallan and Layhill over to Georgia, Georgia and Glenallan. I know that they church
42 there have voiced strong concerns to me about the height that they will have right
43 across the street from them, the Baptist church there. Plus, if you go across Georgia
44 Avenue, those are single family homes right across from, as you go up Georgia a little



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1 bit, you will have single family homes with this big kind of wall of this development. And I
2 am concerned about that. I know that, I have been told it will come up later.

3
4 Councilmember Praisner,
5 Right.

6
7 Michael McAteer,
8 It's true, we did have this discussion and a vote but it was way early in the process. I
9 protested, not too well but loudly, and I thought it was way too early in the process, you
10 know, to take that kind of a decision, we'll put the height here or there. The sector plan
11 says put the height in the back. And it says it loud and clear. Let me just, about the
12 community, the connecting to the community, in my view, I mean, I, you know, I guess it
13 could be designed, but I don't see it designed honestly. I know these guys, I think they
14 have tried. But it is really walls. It's walls along Layhill. It's walls along Georgia. And that
15 just says, you know, we are separate from you, the community. I think they need to look
16 at that. The only way they connect, and I have said this in the hearing is I think, would
17 be to have, as they say, activate Glenallan with businesses. Because Glenallan is right
18 across from the Metro and you would have a natural back and forth.

19
20 Councilmember Praisner,
21 Okay.

22
23 Michael McAteer,
24 But the problem there is, Glenallan is unsafe to cross.

25
26 Councilmember Praisner,
27 Okay. Thanks Mr. McAteer, Mike. I just have a couple more questions. One relates to
28 the issue of the Local Area Test and requirements. And I am not sure how to deal with
29 the memo from Mr. Zyontz, but it was referred to in the conversation here. It, obviously,
30 wasn't part of the record because it was not developed at that point. But it clearly makes
31 the point that I think Mr. Zyontz has made today, which is that there is no requirement
32 right now, as far as the use of LATR at this point in the process. And, therefore, while I
33 appreciate the applicant's comments about tradition and use, the reality is there is no
34 requirement at this point. Does anyone disagree?

35
36 Unidentified
37 I do.

38
39 Unidentified
40 I do.

41
42 Councilmember Praisner,
43 Okay.



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1 Francoise Carrier,
2 There is no statutory requirement.

3
4 Councilmember Praisner,
5 Correct.

6
7 Francoise Carrier,
8 There is, however, in the LATR guidelines, it explicitly directs applicants in zoning cases
9 to follow the LATR guidelines in their submissions to the Hearing Examiner. So, they
10 are told that that is what they should follow by an agency that has not the deciding, not
11 decision power in a zoning case, but certainly authority to make recommendations and
12 which carry a great deal of weight.

13
14 Councilmember Praisner,
15 Mr. Zyontz, did you want to comment and then Mr. Robins?

16
17 Jeff Zyontz,
18 No, I think.

19
20 Councilmember Praisner,
21 Mr. Robins first and then.

22
23 Jeff Zyontz,
24 I think that is correct. My distinction would be that Council has not directed any specific
25 standard. Yes, that is the standard that is essentially a regulation internal to Park and
26 Planning not reviewed by the Council although.

27
28 Councilmember Praisner,
29 Not acted on by the Council.

30
31 Jeff Zyontz,
32 Although mandated by the Council and I also do think, agree with the Hearing Examiner
33 that certainly it's been the custom that that standard has been applied.

34
35 Councilmember Praisner,
36 Okay.

37
38 Steven Robins,
39 I think I would agree with both Francoise and Jeff. The LATR guidelines are really clear
40 on page one. Right on page one. It says that an applicant in a rezoning case follows the
41 LATR guidelines. And part of that is preparing a Local Area Transportation Review
42 study that involves the Critical Lane, right on page one, the, it involves preparing an
43 LATR analysis, which involves CLV methodology.



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1 Unidentified
2 I would also add that Mr. Zyontz.
3
4 Councilmember Praisner,
5 For subdivision and mandatory referral.
6
7 Steven Robins,
8 Read on page one, it says.
9
10 Councilmember Praisner,
11 Right, but it.
12
13 Steven Robins,
14 In special exception and zoning cases. Can I see that for a second because I don't have
15 my guidelines.
16
17 Unidentified
18 Sure.
19
20 Steven Robins,
21 The LATR guidelines are also recognized as a standard to be used by applicants in the
22 preparation of reports to the Board of Appeals and the Hearing Examiner for special
23 exception and zoning cases brought before these bodies. It is the last paragraph on
24 page one.
25
26 Councilmember Praisner,
27 Okay. I see it.
28
29 Steven Robins,
30 So, I mean, and without preparing an LATR study.
31
32 Councilmember Praisner,
33 But it is not a requirement. It's a standard, but it's not a requirement.
34
35 Steven Robins,
36 It is a guideline. I understand that. It's in the guidelines. But I can also tell you that when
37 you file the zoning application, that if you don't have your traffic study that follows these
38 guidelines, the application is going nowhere.
39
40 Councilmember Praisner,
41 Okay. I just have two more questions.
42
43 Council President Knapp,
44 Okay.



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1
2 Patrick O'Neil,

3 Can I just comment a little bit on Mr. Zyontz's memorandum? The standard he sets out
4 as being used essentially right now, is that you follow the LATR guidelines unless, either
5 the applicant or opponents submit additional information that makes you think that traffic
6 does not work or does work. In this case, you received a lot of information from
7 opponents that it does not work. However, the one very relevant piece of information
8 that the applicant submitted was rejected because it did not follow LATR guidelines and
9 that was the interchange. That is reasonably probable of fruition in the foreseeable
10 future which was rejected and not accepted in the Hearing Examiner's report.

11
12 Councilmember Praisner,

13 Accepted from a standpoint of inclusion or accepted from a standpoint of standards?
14 Rejected.

15
16 Francoise Carrier,

17 Not in terms of standard. What Mr. O'Neil is referring to is that I, the LATR guidelines
18 specifically state that for purposes of LATR, an applicant cannot rely on a publicly
19 funded roadway improvement that has not been fully funded for construction within the
20 next four years. And, you know, there is a lot of evidence that it is pretty likely that
21 interchange will be built. But I felt constrained by, you know, a very specific rule that the
22 Planning Board has set out and I was reluctant to advise the Council to go contrary to
23 that rule by considering the interchange to be reasonably probable of fruition in the
24 foreseeable future. Say that four times fast.

25
26 Council President Knapp,
27 I prefer not to.

28
29 Francoise Carrier,
30 And in addition.

31
32 Councilmember Praisner,
33 It isn't fully funded and.

34
35 Francoise Carrier,
36 The applicant. No. It is not funded for construction.

37
38 Councilmember Praisner,
39 Correct.

40
41 Francoise Carrier,
42 And moreover, the, no evidence was actually put in the record about what it would do to
43 the intersection. I don't, there is, one can infer that if the Planning Board and the
44 Planning staff and the County Council think it is a great thing, it must be something that



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1 will improve the intersection. There is no actual specific evidence in the record about
2 that.

3
4 Council President Knapp,
5 If you could do one more question.

6
7 Councilmember Praisner,
8 My last question.

9
10 Council President Knapp,
11 Okay. Let's get this one over folks.

12
13 Councilmember Praisner,
14 My last question.

15
16 Council President Knapp,
17 Let's let, no, let's let Marilyn ask her last question.

18
19 Councilmember Praisner,
20 My last question relates to the queuing in your comments about what Mr. Kauffunger's
21 chart does not show. Because I think it does show what he was arguing. Which is, that
22 even with a green light, traffic does not move because it can't get through the
23 intersection because the light, because the traffic in front of it is all backed up as well
24 and that that occurs in a domino fashion away from the Georgia/Randolph intersection
25 and away from the Layhill/Georgia intersection through Glenallan, through Middle Vale,
26 through to Kent Mills sometimes. Now, Kent Mill is not part of the Glenallan.

27
28 Steven Robins,
29 He didn't testify to that.

30
31 Councilmember Praisner,
32 No, he said.

33
34 Steven Robins,
35 He may have said it here.

36
37 Councilmember Praisner,
38 Right.

39
40 Steven Robins,
41 But he certainly didn't testify to that.

42
43 Councilmember Praisner,



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1 Okay. Well, but, through Middle Vale and Glenallan and Layhill. So, are you arguing that
2 these pictures don't show that?

3
4 Steven Robins,
5 I don't, these pictures don't show the queue that you just described.

6
7 Councilmember Praisner,
8 Well, there is a line through, on page two, there is Glenallan going towards Georgia, I
9 believe, with cars through the intersection.

10
11 Steven Robins,
12 Which page are you looking at?

13
14 Councilmember Praisner,
15 121B.

16
17 Steven Robins,
18 Uh-huh.

19
20 Councilmember Praisner,
21 Going through the, they are stuck in the intersection, they're blocking the box, so to
22 speak. But they are stuck in the intersection and can't get through. So it is backed up all
23 the way through to another intersection.

24
25 Steven Robins,
26 The light is green there.

27
28 Councilmember Praisner,
29 Right.

30
31 Steven Robins,
32 In that picture.

33
34 Councilmember Praisner,
35 But they can't go.

36
37 Steven Robins,
38 Well we can't.

39
40 Councilmember Praisner,
41 That is the point Mr. Kauffunger is showing. The light is green but no one can go
42 through because the traffic in front of them is not going and because presumably.

43
44 Steven Robins,



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1 I believe it is a snapshot in time of what is happening right there.
2
3 Councilmember Praisner,
4 That's not.
5
6 Steven Robins,
7 But the light is not red.
8
9 Councilmember Praisner,
10 That is not, well, that is the point. Queuing goes beyond the intersection that is red or --.
11
12 Steven Robins,
13 We do not know if these automobiles are moving or if they're sitting absolutely still.
14
15 Unidentified
16 They are just parked.
17
18 Steven Robins,
19 Well, I wouldn't say that.
20
21 Councilmember Praisner,
22 Well, they certainly don't look like they are moving.
23
24 Council President Knapp,
25 Please keep comments.
26
27 Steven Robins,
28 And in an area that has a standard of 1800 CLV's, you're going to get congestion and
29 you are not going to be able to get through the cycle in one shot.
30
31 Councilmember Praisner,
32 Well, but the point is, a study of queuing that was or was not done and the comments
33 related to queuing and the analysis that would go beyond the one intersection.
34
35 Steven Robins,
36 We were advised by the Chief of Transportation Planning at the time not to do a
37 queuing analysis. And there is an e-mail in the record to that effect.
38
39 Councilmember Praisner,
40 Oh okay.
41
42 Steven Robins,
43 Do I need to respond?
44



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1 Councilmember Praisner,
2 Alright. Okay. Nope, that's fine.

3
4 Council President Knapp,
5 Okay, let's --.

6
7 Steven Robins,
8 We're proposing improvements that would improve the flow at that intersection and
9 beyond.

10
11 Council President Knapp,
12 I would like to move on to, if we have more questions, we'll come back around.
13 Councilmember Floreen.

14
15 Councilmember Elrich,
16 Do you have a motion? You said something about making a motion.

17
18 Councilmember Praisner,
19 Yeah, I'm going to make a motion to remand consistent with the hearing Examiner.

20
21 Councilmember Elrich,
22 Second.

23
24 Council President Knapp,
25 Okay.

26
27 Councilmember Floreen,
28 Okay.

29
30 Council President Knapp,
31 Now we have a motion before us. Ms. Floreen.

32
33 Councilmember Floreen,
34 Yeah. A lot of things I could say I'm not going to say about this because it's not in the
35 record. So I'm going to ask the Hearing Examiner, so if we remand this, what exactly
36 are you going to do and what are the rules that would apply?

37
38 Francoise Carrier,
39 Well, what I anticipate is probably to start off with a public session to discuss exactly
40 that question. Applicant's counsel asked me that question. It's a perfectly fair question.
41 It's not one I am.

42
43 Councilmember Floreen,
44 Well, that is something for us to determine what the point of this would be.



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1
2 Francoise Carrier,
3 Yes.

4
5 Councilmember Floreen,
6 We have heard from Mr. Ross on the transit side who thinks this is just dandy. We have
7 heard from Ann Ambler on the transit side that would like to see the light rail. We have
8 heard neighbors who have differing opinions as to sidewalks, intersection widenings,
9 whether there should be an interchange, yes, no. I mean, we have got a lot of points of
10 view on what should occur here. We have got a master plan and then we have the
11 transportation guys down at Park and Planning who are, who, at the end of the day, are
12 the ones who decide this. So tell me, how you would structure this outside of all these
13 rules we've got in place already.

14
15 Francoise Carrier,
16 What I envisioned is that the applicant, it's a, there's a little bit of tension here because
17 there is no statutory guidance, I'm not sure that I can order the applicant to do certain
18 things. My intention is to make suggestions as to what the questions that were created
19 for me by the evidence to date and allow the applicant to decide how to answer those
20 questions.

21
22 Councilmember Floreen,
23 But how do they know if they pass or fail?

24
25 Francoise Carrier,
26 Well, that was the question that Mr. Robins also asked me and.

27
28 Councilmember Floreen,
29 I think it's a good question.

30
31 Francoise Carrier,
32 It is a very fair question.

33
34 Councilmember Floreen,
35 I think everybody in the community would like to know what the test is, that you would
36 apply, that is different from the one that has classically been employed in these cases.

37
38 Francoise Carrier,
39 My expectation is that the applicant will probably offer, if this is remanded, to do a
40 queuing analysis or a delay analysis. What steps that would include, I couldn't tell you,
41 not being a traffic expert. I expect that they will, they may try to demonstrate that in fact
42 the queues aren't that long. Maybe they will succeed in doing that. They may, to do that
43 they would need to come up with some kind of standard based on some accepted traffic
44 guidelines. The Institute of Transportation Engineers probably has stuff about queuing



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1 that we don't use in this County very often but that is used in other jurisdictions. And I
2 am sure that the able transportation experts the applicant has will be able to find some
3 kind of standard that is used either elsewhere in Maryland or nationally to say, this
4 much queuing is considered acceptable in an urban area, that much is not.

5
6 Councilmember Floreen,
7 Well, we have got.

8
9 Francoise Carrier,
10 If they don't succeed in demonstrating that the queuing is acceptable, the next step
11 would be to say what they can do that would make the queues shorter. And then they
12 may look to transit related solutions that may take cars off the road. They may say the
13 roadway improvements plus some other improvements will combine to reduce the
14 queues. The point would be to have the evidence presented, not just in context of a
15 CLV analysis, but also in the context of a queuing or delay analysis to respond to the
16 evidence that was actually presented in this particular case and refute that evidence.

17
18 Councilmember Floreen,
19 But, my difficulty in understanding what you're asking us to say and to do is, well, what
20 is acceptable? Mr. Kauffunger, I know, has been engaged in these issues for over 20
21 years. I think he has very strong feelings about that. Mr. Headburg, likely, has a different
22 perspective, as would Mr. Ross and Ms. Ambler and many of the community members
23 who are not transportation experts, but know what it is like there today. And that,
24 frankly, we all do, and that is kind of in the record, I hope. So, I am just trying to
25 understand what test would you employ that is not in existence within Montgomery
26 County and applied by the people who apply this who are the ones who have already
27 applied the test, the Planning Transportation staff and the Planning Board already. You
28 are saying you would come up with some community based satisfactory standard?

29
30 Francoise Carrier,
31 No. I am suggesting that the applicant's traffic expert will proffer a standard, that he will
32 proffer evidence based on standards that are used in the traffic planning profession.

33
34 Councilmember Floreen,
35 Where? The New York standard or the Houston standard or the Orlando standard or the
36 ever popular Portland standard?

37
38 Francoise Carrier,
39 At this point, I guess I don't know.

40
41 Councilmember Floreen,
42 Right. And I am, I am just, I am just really troubled by your suggestion that there is
43 another, there is a better way. I mean, I don't know that we have the right way, but we
44 have our way. And everyone, this is, there is a reason why we've identified this



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1 intersection, as a matter of County policy, as one that needs significant work. And it is
2 on various lists and there are various ways, and we actually have it in the process of
3 negotiation right now, as I believe you recommended, noted in your Report. So I am, I,
4 you are saying that, well, you would have a meeting and you would come to consensus
5 over what is an acceptable standard and then you would have the applicant
6 demonstrate compliance or not?

7
8 Francoise Carrier,
9 I think consensus is not a word that I would use. I have the privilege of not requiring
10 consensus. I would certainly seek.

11
12 Councilmember Floreen,
13 Well, then what would you use?

14
15 Francoise Carrier,
16 I would certainly seek input. The purpose of having a public hearing is that I am not
17 permitted to discuss these matters outside of a public record.

18
19 Unidentified
20 Right.

21
22 Francoise Carrier,
23 I can not have a meeting with just the applicant to say this is what I think you should do.
24 That would be impermissible.

25
26 Councilmember Floreen,
27 Well, fair enough. Sure. And whatever you.

28
29 Francoise Carrier,
30 So, I would have a public session.

31
32 Councilmember Floreen,
33 Well, shouldn't you know, as of this moment in time, what is the issue that the
34 community and the applicant is going solve?

35
36 Francoise Carrier,
37 Yes, I believe I have identified the issue.

38
39 Councilmember Floreen,
40 Well, no. You don't like CLV. Is that it? I mean, I'm just try.

41
42 Francoise Carrier,
43 I wouldn't phrase it that way. The way I would phrase it is that the evidence in this case
44 did not demonstrate to me that this project would not have adverse traffic



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1 consequences. I found the CLV analysis unpersuasive, in this particular case, because
2 of actual evidence, testimony from really the applicants, traffic planner, many people in
3 the neighborhood, as well as the photographs that Mr. Kauffunger presented to me,
4 made the CLV analysis unpersuasive.

5
6 Councilmember Floreen,
7 But the CLV, and I'm no big fan of it, but that is what the standard for these kinds of
8 cases, at least through the guidelines, has been.

9
10 Francoise Carrier,
11 And that is a decision before the Council. There is a policy decision that if you want to, if
12 you want to make a decision that is satisfying the LATR guidelines is enough, and that,
13 therefore, little weight should be put on evidence that suggests the result of that
14 analysis is not persuasive, that's a policy decision the Council can make. For me,
15 weighing the evidence, I was not looking from a policy standpoint. My perspective is, as
16 a legal actor and I just weigh the evidence.

17
18 Councilmember Floreen,
19 But my, but you have to weigh it against something. And the challenge of all this, we've
20 got nine of us, we have nine different perspectives, perhaps, about what's adequate.
21 And we look to you to advise us on how the, all the different perspectives match up
22 against pretty, more or less, established legal standards within a zoning case. I mean, I
23 am concerned that we can have this same conversation here in six months with exactly
24 the same point transportation point made by every player who's here today. Because, I
25 would just be quite, knowing the folks as I do, I would be quite shocked as to whether
26 there is some community consensus as to the satisfactory nature of this intersection.

27
28 Francoise Carrier,
29 My goal is not to assess whether the community is satisfied. That is not the test that I
30 am charged with applying. The test that I apply is whether I believe the evidence
31 demonstrates no adverse impact from, in, from the best objective analysis that I can
32 provide. It is not a question of polling the community. I have had many cases in which
33 there is, the community would never be satisfied unless an application were withdrawn.
34 I am not looking for community consensus. I am always accepting community input.
35 There is a difference.

36
37 Councilmember Floreen,
38 Well, let me ask you about the Planning staff recommendations in this.

39
40 Francoise Carrier,
41 Um hum.

42
43 Councilmember Floreen,
44 Transportation staff. It's circle 268 and 269. They have a whole long list of stuff. And.



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1
2 Councilmember Trachtenberg,
3 268.

4
5 Councilmember Floreen,
6 Circle 268.

7
8 Francoise Carrier,
9 It's in the original Transportation staff memo.

10
11 Councilmember Floreen,
12 Our particular packet. And, not to get into it in great detail, but, are you saying that those
13 are not appropriate standards?

14
15 Francoise Carrier,
16 My sense is that Transportation staff does not as a general matter look beyond LATR.
17 The LATR guidelines are what they follow. And, they were not, I think they do not look
18 at it. They don't, I take a slightly broader perspective.

19
20 Councilmember Floreen,
21 Okay. So you would not, you are not particularly persuaded by their recommendations?

22
23 Francoise Carrier,
24 Correct.

25
26 Councilmember Floreen,
27 That they're, well, let me just ask and anyone can answer. Are those the tests that
28 would be applied at subdivision?

29
30 Steven Robins,
31 This LATR analysis?

32
33 Councilmember Floreen,
34 Well, what's on these two pages.

35
36 Steven Robins,
37 Yes. Yeah, it is an LATR analysis. Essentially, it's a, the LATR guidelines typically are
38 for subdivision applications, although that one paragraph on page one, makes the
39 notation that it does apply at the time of zoning. So, yes.

40
41 Councilmember Floreen,
42 But these are.

43
44 Steven Robins,



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1 You would get a similar memorandum, unless, of course, at subdivision, if that grade
2 separated interchange is fully funded, it would be, you know, a totally different analysis.

3
4 Francoise Carrier,
5 It also will be analyzed, at this point, it would be under whatever growth policy is in
6 effect at that time.

7
8 Steven Robins,
9 Right. I would agree with that too.

10
11 Francoise Carrier,
12 So, it would be a slightly different test by the time this gets to subdivision.

13
14 Steven Robins,
15 Right. You would have the, right, you will have the new growth policy.

16
17 Councilmember Floreen,
18 Mr. Kauffunger.

19
20 Richard Kauffunger,
21 I will explain it slightly differently. The standards as set, legislated by the Council are set
22 down in the growth policy. What the LATR is, is that's that their regulatory guidelines
23 followed by the Planning Board. They are not law so you have to make the distinction
24 between the two.

25
26 Councilmember Floreen,
27 They are law if we'd like them to be.

28
29 Richard Kauffunger,
30 The other thing is your quandary of where you would get guidance on how to handle all
31 this, we have a pretty fine university within proximity to this area called the University of
32 Maryland.

33
34 Councilmember Floreen,
35 And you've taken good advantage of them.

36
37 Richard Kauffunger,
38 And we do not make use of them. Okay. Because what they have told me is they don't
39 have conversations with the people in Montgomery County. And it is one of the things
40 that is kind of puzzling to them. And they would represent that the standards have
41 changed tremendously. And when you go into all of the depth of these issues, as to
42 whether or not we should follow the LATR guidelines, I have been doing zoning cases
43 for almost 25 years, the first 15 years, the attorneys for the applicants always used to



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1 argue that there was no need to discuss transportation at all at time of zoning. That was
2 the big argument. And then whether or not you had to follow exactly – .

3
4 Unidentified
5 I guess that was before my time.

6
7 Richard Kauffunger,
8 Not park or farm, you were there. I know you were there for park or farm.

9
10 Councilmember Floreen,
11 Okay. Thank you. Thank you, Dick.

12
13 Richard Kauffunger,
14 But just one other.

15
16 Councilmember Floreen,
17 Dick, I appreciate your comments but, if we could return to this, just to understand,
18 Francoise, you don't accept then the Park and Planning standards for review that they
19 would apply in subdivision for a zoning case? Is that what I am hearing?

20
21 Francoise Carrier,
22 I can't say for all zoning cases.

23
24 Councilmember Floreen,
25 But for this one.

26
27 Francoise Carrier,
28 For this particular zoning case, yes.

29
30 Councilmember Floreen,
31 Well, that's for this one.

32
33 Francoise Carrier,
34 Yes, you know.

35
36 Councilmember Floreen,
37 You just want another standard but you're not sure what.

38
39 Francoise Carrier,
40 I'm not even sure I'm looking for a standard. I'm looking for evidence.

41
42 Councilmember Floreen,
43 Of what?



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1 Francoise Carrier,

2 You know, if you look at the case law in zoning cases, the courts have supported
3 legislative bodies' decisions to grant or deny zoning based on a variety of types of
4 evidence. Even, there is a case that I cited in my report where there was a study that
5 was done in the way that was normally done and then there was contrary evidence
6 brought in by community members and the zoning was denied and the courts upheld it.
7 I am certainly influenced by decisions of the courts and they don't require the Council to
8 do that. But they certainly allow it.

9
10 Councilmember Floreen,

11 I agree that we have a range of discretion here, but I am just trying to understand what
12 you are asking us to say in an opinion where we are directing some kind of
13 conversation. And what I hear you saying is that the opinion that you'd have us adopt
14 would say, we don't accept LATR analysis, I think you have something like that in here.

15
16 Francoise Carrier,
17 I think all I would.

18
19 Councilmember Floreen,
20 And we direct the applicant to satisfy X.

21
22 Francoise Carrier,
23 The way I would phrase it is the way I have written it in the draft resolution that is in your
24 packet, if you look at Circle 44, it doesn't say, it doesn't set forth a standard. It has, this
25 County, so far, has never set forth a standard for zoning cases. Should the Council wish
26 to do that, certainly that can be done legislatively. I was not intending to establish a
27 standard.

28
29 Councilmember Floreen,
30 But what would you have us say?

31
32 Francoise Carrier,
33 That you are remanding the case to provide the applicant with the opportunity, we are
34 on Circle 44, remanding the case to provide the applicant with the opportunity to present
35 additional evidence concerning traffic conditions at the intersection of Randolph Road
36 and Georgia Avenue, such as a queuing and delay analysis. Two, to show what, that
37 was one, two to show what steps the applicant is willing to take to mitigate its traffic
38 impacts, which may include, but need not be limited to the at grade improvements
39 already proposed. And three, to demonstrate that the proposed mitigation would prevent
40 adverse traffic impacts on the surrounding area from stage one or the combined stage
41 one and stage two of the proposed Glenmont Metro Center.

42
43 Councilmember Floreen,



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1 Yeah, I know what that says. So, you are saying then that what you don't have is a
2 queuing and delay analysis?

3
4 Francoise Carrier,
5 Correct.

6
7 Councilmember Floreen,
8 Is that the sole piece of information that you need?

9
10 Francoise Carrier,
11 If it, if the applicant can demonstrate with a queuing and delay analysis that there is no,
12 that there will be no adverse traffic impact, they are done. If that does not demonstrate
13 it, then they would need to come up with additional mitigation to, and a new, that would
14 say well, now the queuing will be shorter or the delays will be shorter. They also may
15 choose to use the alternative review procedure. And if they do that, they don't have to
16 do anything with LATR. They just have to say, here's how we're going to mitigate 50%
17 of our trips and we're going to make a payment, and it is done. I have no authority to
18 look beyond that, if that is what they choose to do.

19
20 Steven Robins,
21 Can I comment, can I just comment on that one piece?

22
23 Councilmember Floreen,
24 I'd like to know.

25
26 Steven Robins,
27 Because, if this matter does get remanded, I do want to make sure that the Council
28 understands, as the Hearing Examiner mentioned, that if we are required to do a
29 queuing analysis or we're required to do whatever the Hearing Examiner suggests, that
30 we would also look at the alternative review procedure that's on the books right now to
31 see if that is yet another opportunity.

32
33 Council President Knapp,
34 Hold on Ms. Praisner. Ms. Praisner.

35
36 Councilmember Floreen,
37 Okay. Well, I understand, so, what the options would be is a queuing and delay analysis
38 or the alternative review procedure to be reviewed. Is that, from the Hearing Examiner's
39 perspective, is that what you are saying on page, Circle 44?

40
41 Francoise Carrier,
42 I didn't mention the alternative review procedure. That is an option that is always
43 available to this applicant because of the location of the property. I don't think it is
44 necessary for the Council to spell that out as an option on remand because it is legally



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1 available to the applicant. It can be spelled out as an alternative if the Council so
2 chooses. But, in your mind, that would be, well, whether or not we said it, in your mind,
3 that would be.

4
5 Council President Knapp,
6 An option.

7
8 Francoise Carrier,
9 It is certainly a.

10
11 Councilmember Floreen,
12 A solution and it stops at that point.

13
14 Francoise Carrier,
15 If they demonstrate compliance with the alternative review procedures, I believe that
16 that is likely to be satisfactory. It is hard for me to prejudge something. You know, I have
17 to wait until I actually see the evidence before I can give any kind of determinative
18 answer.

19
20 Council President Knapp,
21 Thank you. Councilmember Berliner. And I would only note that we have had two
22 Councilmembers speak and we have been at this for about 40 minutes, so at the
23 current pace we'll be done by about 6:15. Just for observation for Councilmembers.
24 Everyone needs a chance to speak and I appreciate that, but we still have a decision to
25 make in front of us.

26
27 Councilmember Berliner,
28 We do. That is a shame. I confess, I find this to be a very difficult issue. I find it to be a
29 very difficult issue coming back on the first day. A very difficult issue in light of the
30 savings plan, in light of, what else, the little small things that we do to.

31
32 Councilmember Praisner,
33 Public hearing tonight.

34
35 Councilmember Berliner,
36 Public hearings tonight. You know, other than that we have nothing going on here and
37 to absorb this is.

38
39 Francoise Carrier,
40 I am not just trying to make trouble for you.

41
42 Councilmember Berliner,
43 I understand that. I appreciate.



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1 Unidentified

2 As far as scheduling, we can point to him so.

4 Council President Knapp,

5 As she says that, she is backing away from the table.

7 Councilmember Berliner,

8 I will make an observation and then I'll have some questions as soon as I can find my
9 pieces of paper. I, too, find it troublesome that, as at least I appreciate it, we have had a
10 standard that has been in place for many years. I get, I could accept for purpose of this
11 conversation that that standard may be flawed, that there could be circumstances in
12 which Critical Lane Volumes don't work, that it could be a situation where traffic backs
13 up and therefore, it is not moving and therefore, gosh, maybe it is not the best. What I
14 don't get is how that is your call as opposed to our call. And what I don't understand,
15 and it is related to what Councilmember Floreen was saying is, what you do on remand
16 that I believe is, has a standard. So, to me, if I am going support remand, it is going be
17 with directions with respect to exactly what the standard is that you will provide.
18 Because I perceive that to be a policy call that this body ought to make, not that you
19 ought to make. And I think you fundamentally agree that the policy judgment ought to be
20 here.

22 Francoise Carrier,

23 Of course.

25 Councilmember Berliner,

26 But once you move past CLV, by definition, you are making a policy. A, you are making
27 a policy call that the CLV you'd found unpersuasive and therefore, something more is
28 appropriate, whatever that something more is is a policy call by you. Now, we could
29 maybe just do this and then have the policy call come back to us and deal with it then.
30 That does not seem to make a lot of sense to me. But I hate having fundamental policy
31 calls being made by, first of all, I don't know who is in the room, who is before you, and
32 as one of the parties suggested, University of Maryland maybe has great thoughts with
33 respect to this. I don't appreciate why that should be in this litigated proceeding as
34 opposed to be before us.

36 Francoise Carrier,

37 Well, I guess I see a couple of ways to address this. I will tell you, frankly, I did not
38 anticipate that the Council would want to set a standard in this, in the context of this
39 particular case. I anticipated that if the case were remanded, as other cases have been
40 on other issues, I would accept the applicant's evidence and I would evaluate it as best I
41 could allowing the traffic experts to figure out what evidence to submit. If the Council
42 feels that.

44 Councilmember Berliner,



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1 Could I stop you there?

2
3 Francoise Carrier,
4 Yeah. Sure.

5
6 Councilmember Berliner,
7 Just so that we are staying on. I don't understand the distinction you're making.
8 Because by definition, we've had a standard in place. CLV standard. And your decision
9 says, you know, you don't trust that. You didn't argue, as I appreciate it, that they're
10 showing with respect to whether they met the CLV standard was sufficient. You
11 conceded that they did, in fact, meet the CLV standard. Your question, it seems to me,
12 is whether or not the CLV Standard is adequate, which by definition means there is
13 some other standard that you are establishing. Am I wrong?

14
15 Francoise Carrier,
16 The standard, the only standard that I felt I was working was demonstrating lack of
17 adverse traffic impact. I did not anticipate a more specific standard. I am getting the
18 sense that you and Ms. Floreen are thinking that there, if we're not going, if you're going
19 go beyond CLV, there have to be defined parameters for what the other, for whether it is
20 a queuing analysis or delay and what that constitutes. If that is the case, then, the
21 Council, if the Council wants to remand this case, there could be a remand with
22 direction that I not reopen the record until the Council has had a chance to get input
23 from the professionals at Park and Planning or whatever other professionals the Council
24 wishes to consult to develop a standard. If the Council wants to develop a standard, we
25 can certainly hold, you know, delay this case until a standard has been developed. I
26 personally don't have the expertise to articulate a standard today.

27
28 Councilmember Berliner,
29 And again, just so that we are not talking past each other, we have had a standard that
30 sought to determine whether or not there was an adverse traffic impact.

31
32 Francoise Carrier,
33 Yes. Yes.

34
35 Councilmember Berliner,
36 And the way in which we determined whether there was an adverse traffic impact was
37 whether or not it met the CLV requirement.

38
39 Francoise Carrier,
40 Yes.

41
42 Councilmember Berliner,



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1 So we have had, for many years, a way of measuring the question that you are posing.
2 It is not an open-ended question. It was a question of, here is adverse traffic impact and
3 here is how we are going measure that, through CLV.
4

5 Francoise Carrier,

6 Although there have been cases where the Council departed from a strict CLV analysis.
7 One of them is the case that resulted in the judicial opinion that I referred to earlier, that
8 was a Montgomery County case. Another one is a case that my colleague Mr.
9 Grossman conducted, I don't know, in the last year, in which there was no traffic expert.
10 The traffic generation was too low to require an LATR study. The traffic planner, the
11 transportation planners at Park and Planning said there would be, they felt there would
12 be no adverse impact. There was contrary evidence from the neighbors. The Council
13 remanded the case at Mr. Grossman's recommendation for more evidence on traffic
14 and because there was a serious question about storm water management. That
15 application was ultimately withdrawn, so there was no final outcome in the case. So
16 there is, you know, there is precedent for going beyond the boundaries of CLV in
17 reviewing a zoning case.
18

19 Councilmember Berliner,

20 Alright. Let me move on to a related.
21

22 Francoise Carrier,

23 You know, if the Council feels that the CLV standard should be accepted and applicants
24 should not be required to go past that, as I said, the Council can approve this
25 application today.
26

27 Councilmember Berliner,

28 Well, I would be more comfortable and I've shared this in my, one of the frustrating
29 aspects with respect to this is, we don't get to talk to one another with respect to this, so
30 we are all doing this free form. I mean, if we were the Supreme Court, we would be
31 having conversations among ourselves trying to figure out what do we do here. And
32 now, in this instance, we are, each of us are being our own judge without the
33 opportunity to confer among each other. But it seems to me that the CLV should be the
34 standard, except where there is, as a lawyer, a preponderance of evidence if you will,
35 substantial evidence, the test may be something that we want to discuss where it has
36 been demonstrated that the CLV is inadequate. And then, you may request additional
37 evidence with respect to it. But, it seems to me, that there first needs to be a showing
38 that CLV is inadequate and has been demonstrated to be inadequate.
39

40 Francoise Carrier,

41 In my view, that showing was made in this case.
42

43 Councilmember Berliner,

44 You believe that showing was made?



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1
2 Francoise Carrier,
3 Yes.

4
5 Councilmember Berliner,
6 Alright. And that is what the evidence says to you, that the CLV.

7
8 Francoise Carrier,
9 That's correct. And I have had lots of opposition people try to convince me in other
10 cases that the CLV analysis wasn't good enough. This is the first time that I found the
11 evidence brought in by community members to be sufficiently persuasive to suggest a
12 remand on these grounds.

13
14 Councilmember Berliner,
15 Let me turn to stage one versus stage two in the separated highway, or on the
16 separated roadway. What is it called?

17
18 Councilmember Praisner,
19 Grade separated.

20
21 Francoise Carrier,
22 Grade separation.

23
24 Councilmember Berliner,
25 Grade separation. Great. Great. It is my top priority. Let's get back to my top priority.

26
27 Unidentified
28 It's a top priority, and that is in the record.

29
30 Councilmember Berliner,
31 Okay. Let's get back, alright, my top priority, my understanding is, and correct me if I am
32 wrong, that you concluded that you could not accept that because it had not been
33 funded. Did you not accept that for stage one and stage two? Or for just stage one.

34
35 Francoise Carrier,
36 I did not consider it for either stage.

37
38 Councilmember Berliner,
39 Alright. Now here's what I find troublesome.

40
41 Francoise Carrier,
42 That's not entirely true because for stage two, there is a binding element.

43
44 Councilmember Berliner,



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1 Yes.

2
3 Francoise Carrier,
4 That specifies that stage two will not be built until a traffic improvement that is
5 considered adequate by the Planning Board is built.

6
7 Councilmember Berliner,
8 Right.

9
10 Francoise Carrier,
11 Or the grade separated interchange is funded.

12
13 Unidentified
14 Right.

15
16 Councilmember Berliner,
17 Yes. I know that is true but I don't know how your analysis with respect to either the
18 CLV's or others was impacted by your determination not to use that with respect to
19 stage two. Did you just focus then on stage one in coming to the conclusion? Because
20 you can't get to stage two unless the road is, the improvement is actually made.

21
22 Francoise Carrier,
23 You know, that binding element was, it was really, it really came out, largely came out of
24 the sector plan recommendations because the sector plan recommended the phase one
25 and the phase two.

26
27 Councilmember Berliner,
28 Yes.

29
30 Francoise Carrier,
31 And phase two was tied to the grade separated interchange.

32
33 Steven Robins,
34 Or.

35
36 Francoise Carrier,
37 Or such other improvements that the Planning Board might think would work and they
38 gave the two examples that are the two roadway improvements suggested here. So,
39 that language was really a response to the sector plan and, to me, the language of that
40 binding element.

41
42 Steven Robins,



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1 Or transit improvements. It could have been, I think the sector plan even mentioned an
2 alternative review procedure although it was a different procedure than what's on the
3 books today. It was the DAP payment.

4
5 Francoise Carrier,

6 Yes, well, I didn't remember about that. So, the wording of that binding element was not
7 directly related to whether I felt the evidence had demonstrated lack of adverse traffic
8 impact. The binding element took care of the phasing issue for the sector plan.

9
10 Councilmember Berliner,

11 Okay. But, it didn't influence your judgment, for example, that the road improvements,
12 as I understood them, were there in part because you couldn't accept their evidence
13 with respect to the grade separation. Am I wrong with respect to that?

14
15 Francoise Carrier,

16 I am not sure I am following you, I'm sorry. You are fine. Oh Goc.

17
18 Councilmember Berliner,

19 I am not sure I am following myself.

20 Council President Knapp,

21 It must be near the end of the day. [laughter]. It's usually a really good indicator.

22
23 Councilmember Berliner,

24 Alright. I will end, I want to make sure that I appreciate that if this were not remanded,
25 when it goes back to Park and Planning for subdivision, I want to know precisely what
26 standards are applicable today for that, that would be.

27
28 Steven Robins,

29 You asking me?

30
31 Councilmember Berliner,

32 Yes.

33
34 Steven Robins,

35 The green book before you, the LATR guidelines.

36
37 Councilmember Berliner,

38 It's not the old one, it's the new LATR.

39
40 Steven Robins,

41 Well, that's.

42
43 Councilmember Berliner,

44 Is that correct?



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1
2 Steven Robins,
3 I apologize. The LATR/PAMR guidelines would apply to this application when we go
4 back to Park and Planning for subdivision review.

5
6 Councilmember Berliner,
7 And is PAMR applicable to this project?

8
9 Steven Robins,
10 PAMR would be applicable to this project unless you are achieving the results through
11 the alternative review procedure in which case PAMR doesn't apply.

12
13 Councilmember Berliner,
14 And PAMR's that we have adopted ensure that, basically set a lowest threshold of
15 40%?

16
17 Steven Robins,
18 No.

19
20 Francoise Carrier,
21 I think it is 10% in this policy area.

22
23 Steven Robins,
24 Yeah, it is, actually. In the Kensington Wheaton.

25
26 Francoise Carrier,
27 I looked it up.

28
29 Councilmember Berliner,
30 Say it again. It is 10%?

31
32 Francoise Carrier,
33 Sorry, yeah, the mitigation.

34
35 Steven Robins,
36 If I said this, I would be outside the record.

37
38 Councilmember Berliner,
39 The mitigation is.

40
41 Francoise Carrier,
42 Right. You caught me. You caught me. The PAMR mitigation level for this policy area is
43 currently 10%.



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Councilmember Berliner,

Yes, the PAMR mitigation would be 10% and the standard that we set in our new PAMR was that no cars could go, that basically the lowest threshold was 40% free flow. So, even in these intersections, the presumption would be 40% of free flow. Is that fair, under the new test that we adopted that would be applicable?

Francoise Carrier,

You have gone beyond my knowledge of the new test.

Councilmember Berliner,

Gosh, I'll stop there.

Francoise Carrier,

It was shallow.

Council President Knapp,

Okay.

Councilmember Berliner,

Thank you.

Council President Knapp,

Mr. Elrich.

Mr. Kauffunger,

Can I, could I just comment on.

Council President Knapp,

We're moving. Okay. Mr. Elrich.

Councilmember Elrich,

I'd support remand with a mandate that you use queuing analysis. And, I want to point out that this is actually not as alien as everybody is acting like it is. Queuing analysis is actually part of LATR. Queuing analysis is something that Park and Planning can apply and can apply even below the thresholds when there is, when they believe there is significant or unusual conditions at intersections, such as the kind of delay which in the picture is indicated that, to her, that there was actually a reason for remand. That a test that said everything was fine was contradicted by pictorial evidence that everything was not fine. And that Park and Planning has the ability to use queuing analysis. This Council or those of us at least who are in the PHED Committee should remember from the discussions about LATR that one of the flaws of LATR is exactly the situation that is being brought, of CLV analysis is exactly what is being brought out here, is that, which is that heavily congested roads with short intersections understate the degree of delay and congestion. And we may speculate about as to why Park and Planning and



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1 Transportation staff never saw any reason to require a queuing analysis. But you can be
2 reasonably sure that there are any number of intersections that would have passed the
3 CLV analysis that would not pass a queuing analysis. And so everybody is comfortable,
4 there are actual standards. There are seconds of delay that translate to A, B, C, D, E,
5 and F on quality intersections so that Francoise and whoever has to analyze this is not
6 going to be left to invent a standard, to come up with something that doesn't exist, to,
7 you know, bring to Montgomery County something which has never been used before.
8 All the standards are right there in our LATR guidelines and in the growth policy. So
9 they will be perfectly, she will be perfectly capable of asking for a queuing analysis,
10 getting a queuing analysis, applying the tools that exist, and determining what the
11 situation is on the road. And I applaud you for bringing this to us. Because this is the
12 kind of problem that I think the County has been struggling with for a long time. I think
13 this is a service to have raised the issue here and so you've got this disconnect
14 between what appears to be the condition on the road and what the tests show. And I
15 don't want, on my part, to continue to approve things that I know aren't going to work
16 based on a test which I know has known flaws in it. And the fact that Park and Planning
17 staff did not require it doesn't mean that it couldn't have been done and shouldn't have
18 been done. And the fact that somebody who has, who thankfully, because there was no
19 standard that she only had to require CLV's, could actually look at the evidence and say
20 I need more evidence than the CLV because it doesn't make sense. It, her decision to
21 ask for remand makes perfect sense to me in the light of the evidence she had and the
22 light of other things that are available within Montgomery County's transportation tools. I
23 wanted to ask you about something else and there was a discussion about credits for
24 trip reduction. You had questions about that?

25
26 Francoise Carrier,
27 I was, it was something new to me. I wasn't aware of these trip reduction credits. And
28 the way it was described, a fair number of units could be built based on those, and it
29 may be that that is perfectly appropriate.

30
31 Councilmember Elrich,
32 Can I ask you a question?

33
34 Francoise Carrier,
35 Yeah.

36
37 Councilmember Elrich,
38 Do I know what I know about trip reduction credits?

39
40 Francoise Carrier,
41 Are you allowed to rely on knowledge about trip reduction credits?

42
43 Councilmember Elrich,



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1 Do I know what I know from what Park and Planning told me in the growth policy, in
2 other words, in terms of educating me about what trip reduction credits do or don't do?
3 Do I know that? Am I allowed to know that?

4
5 Councilmember Praisner,
6 As a part of this process.

7
8 Councilmember Elrich,
9 As a part of this process.

10
11 Francoise Carrier,
12 No. Mr. County Attorney?

13
14 Cliff Royalty,
15 [laughter]. I don't know how you know what you know.

16
17 Councilmember Elrich,
18 But I want to put something out there.

19
20 Council President Knapp,
21 Just one second, restate your question so we've got it. [multiple speakers].

22
23 Cliff Royalty,
24 You've got to restrict yourself to facts that are in the record.

25
26 Councilmember Elrich,
27 Okay.

28
29 Cliff Royalty,
30 Now, now, now, you can always take judicial notice of the law, but the facts have to be
31 the facts of record.

32
33 Councilmember Elrich,
34 Okay. But.

35
36 Cliff Royalty,
37 So, does that help? I don't know if that helps or not.

38
39 Councilmember Elrich,
40 So, let me, I will try again before I actually say what I am going to say. Maybe I ought to
41 do this without saying what I'm going to say. Okay. So, you had questions about the
42 efficacy that, the opponents raised questions about the efficacy of the trip reduction,
43 some of the trip reduction measures.



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1 Francoise Carrier,
2 I don't even think it was them. I think that was just me in my little pea brain.

3
4 Councilmember Elrich,
5 Okay, so that's you?

6
7 Cliff Royalty,
8 Another.

9
10 Councilmember Elrich,
11 Okay. So if I have something from Park and Planning which discusses that, which I got
12 prior to this and which I read, not in conjunction with this, but in conjunction with the
13 growth policy, therefore, is implanted in my brain and is part of how I analyze things, am
14 I allowed to know that?

15
16 Cliff Royalty,
17 It is, I don't know what you have, but it is starting to sound factual so, you know.

18
19 Councilmember Elrich,
20 Well, I mean, it's just.

21
22 Cliff Royalty,
23 Something that could have been submitted into evidence before the Hearing Examiner,
24 so I would be hesitant to rely upon it.

25
26 Councilmember Elrich,
27 Well, you guys, I will say it and you guys can say whether it's relevant or not. Park and
28 Planning has a memo where they discuss trip mitigation reductions. And their memo
29 says that, we recognize there is not a direct correlation for the LATR non-auto amenities
30 on a trip reduction values, in table three, which gets to her question or concerns about
31 the use of trip reduction values in order to get to the number of what is acceptable. In
32 other words, when they do a traffic study, they go to the menu of trip reduction values
33 and they say I want to use these things to reduce my trips. She looked at it and said, I
34 am not sure if that makes sense, or whatever she said about the trip reduction values.
35 And I have got a memo that says those trip reduction values actually don't correspond
36 to trip reductions. Do I know that?

37
38 Francoise Carrier,
39 I think it is okay because I think I knew that.

40
41 Councilmember Elrich,
42 Okay.

43
44 Francoise Carrier,



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1 I think it was clear to me that, because I looked at the LATR guidelines, you know, to
2 understand what was being discussed and it is clear that the numbers, the trip credits
3 are not related to actually reducing trips. They're saying, if you do this thing which will
4 create positive transit benefits, we will take this number of trips off of your normal trip
5 generation as, you know, as we've done as a sort of tradeoff. Yeah.

6 .
7 Steven Robins,

8 And the guidelines don't require you as part of a Local Area Review Study to show how
9 the trip credits actually realistically mitigate CLV's. It is a policy decision again, which
10 you have made through the growth policy.

11
12 Councilmember Elrich,

13 But we've asked them, but we've asked them to bring that back because many of us on
14 the Council are troubled by the use of that which doesn't work.

15
16 Council President Knapp,
17 Gentlemen, gentlemen.

18
19 Councilmember Elrich,
20 Hello.

21
22 Council President Knapp,
23 Gentlemen.

24
25 Councilmember Elrich,
26 Hey.

27
28 Council President Knapp,
29 Gentlemen, please. Please sit down-- disagree.

30
31 Councilmember Elrich,
32 I think a number of us are troubled by the use of things which don't work to take
33 vehicles off the road and then turn around and be surprised when the intersections
34 perform worse than the resulting study does. And I.

35
36 Steven Robins,
37 That's the guidelines.

38
39 Councilmember Elrich,
40 Believe me, if I could change those, I would. It's on my list of things to do. But, you
41 know, is that something we could remand and say, you only use those things?

42
43 Francoise Carrier,
44 You can certainly.



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Councilmember Elrich,
Only use things to which Park and Planning can say there is an actual trip reduction?

Francoise Carrier,
You can give me any guidance you want. If you want to give me guidance that I should ignore the trip reduction credit issue completely, I will do so. If you want to include in the remand a direction that the applicant provide evidence about the results of the impact of trip reduction credits, in terms of what would happen on the ground if 300 units were built without any roadway improvements, based on the actions taken to get the trip credits, that could be part of the remand. So, there is sort of two ways to address that and it is possible that the transit improvements would make improvements that would actually do the same thing as roadway mitigation. I don't know.

Councilmember Elrich,
These aren't, I mean, these aren't transit improvements. I mean, it's non-transit improvements that are of concern.

Francoise Carrier,
Oh I see.

Councilmember Elrich,
I guess, you know, I definitely want a remand with the requirement that you do queuing analysis to eliminate this question about what you might do and to let you use a tool which we do have and which.

Francoise Carrier,
Yes.

Councilmember Elrich,
Park and Planning could easily apply.

Jeff Zyontz,
And that would be queuing analysis at the standards within LATR now?

Councilmember Elrich,
The A, B, C, D, E, F.

Jeff Zyontz,
No, what it says is 80% of the distance to the nearest intersection, as opposed to A, B, C, D.

Councilmember Elrich,
Whatever the --.



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1
2 Francoise Carrier,

3 Yeah, it doesn't talk about level of service. It just, it says that your queuing, you have to
4 provide mitigation if your queues go more than 80% of the distance to the next
5 signalized intersection.

6
7 Councilmember Elrich,

8 Because if 80% is the standard, I've been back before Wheaton Regional Park, that
9 should easily.

10
11 Council President Knapp,

12 Okay. Well, to that extent then, I would consider, that's what you're thinking about
13 doing.

14
15 Councilmember Elrich,

16 Yes.

17
18 Council President Knapp,

19 To add that to the motion.

20
21 Councilmember Elrich,

22 Which I thought--.

23
24 Council President Knapp,

25 And then think about what that.

26
27 Councilmember Praisner,

28 Because that's what's in her remand.

29
30 Council President Knapp,

31 Okay. Anything else.

32
33 Councilmember Elrich,

34 No. Thank you.

35
36 Council President Knapp,

37 That sounded convincing. Okay. Mr. Andrews.

38
39 Councilmember Andrews,

40 Thank you. I strongly support a remand. I am very persuaded that the CLV test in this
41 case is not sufficient in demonstrating that there is not adverse impact from the
42 development and I think we need to keep clear. The goal isn't to do a CLV analysis. The
43 goal is to establish whether there is not an adverse impact on the surrounding areas
44 and the standard for assessing that is the preponderance of the evidence. The CLV is a



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1 means. Clearly in this case, an inadequate means to achieving that end. And so, a
2 queuing analysis is not a new idea. It's spelled out here in the Local Area Transportation
3 Review guidelines that if the CLV is over a 1,800 queuing analysis shall be performed
4 and it spells out how. So, I think that is the heart of the issue for me, is that the analysis
5 done doesn't achieve the end that has to be achieved for it to be found to be compatible
6 or approved by the Hearing Examiner and I think she has determined that correctly
7 given the evidence that's right before our eyes of the problem and the unbelievable
8 claim that that would not be worsened by the additional development without more
9 mitigation. So, I think it is clear that we have to keep our eye on the end here and not on
10 the means. The means is not getting you to the policy goal here of achieving no adverse
11 impact. And I think you have applied correctly the standard of preponderance of the
12 evidence. I find it hard to look at this and not believe that one could not find fault with
13 the CLV analysis in this situation, given that if the traffic is not moving, sure, the CLV is
14 going to be down. It doesn't work. Well, certainly in this situation, probably in others,
15 which is why there are other alternatives to look at. And I think the queuing analysis is
16 the one to look at and apply it as it's spelled out in the LATR so there's not this question
17 of how you're going to apply this, what's the means going to be that we're going to look
18 at to do it. I support remand with that condition.

19
20 Council President Knapp,
21 Thank you, Mr. Andrews. Mr. Leventhal.

22
23 Councilmember Leventhal,
24 Alright. I'd like to ask Ann Ambler and Ben Ross, if Mr. Kauffunger and Mr. McAteer
25 could yield their seats please to Ben Ross and Ann Ambler. And I am going try very,
26 very hard just to base what I ask on what is in the record, although there are things in
27 the record that raise questions for me, so I have questions. The questions will be
28 outside the record but they'll based on what is in the record. And my first question has
29 to do with affordable housing. I am reading on Circle 148, the witness Ms. Vergagni
30 noted that the current development on the subject site, Privacy World, has 352 units of
31 affordable housing. She doesn't know whether these are formally MPDU's but she
32 believes they meet the affordability guidelines. The new development would have only
33 225 MPDU's, a loss of 127 affordable living units. Does the applicant agree that we are
34 having a net loss of affordable units as a result of this project?

35
36 Steven Robins,
37 There are 352 units on the site. They are not all in commission. In other words, they are
38 vacant and some aren't even licensed. There are about --.

39
40 Councilmember Leventhal,
41 The owner has been attriting them basically, letting them go?

42
43 Steven Robins,
44 No.



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1
2 Councilmember Leventhal,
3 Vacant in order to sell.

4
5 Steven Robins,
6 He had , there were problems with them. He did not license all of them. There are – .

7
8 Francoise Carrier,
9 We are going a little outside the record talking about licensing. The evidence in the
10 record is that there are 352 units and 219 people actually live there.

11
12 Councilmember Leventhal,
13 Uh huh.

14
15 Francoise Carrier,
16 We don't know how many units are in a livable condition.

17
18 Councilmember Leventhal,
19 Okay, 219 people today living in Privacy World.

20
21 Francoise Carrier,
22 Ms. Vergagni gave us that information and nobody has contradicted it so I.

23
24 Councilmember Leventhal,
25 A new development would have 225 MPDU's out of a total 1,600 units.

26
27 Steven Robins,
28 Has 14.5% MPDU's.

29
30 Francoise Carrier,
31 Yeah, I don't remember the figure, but it is.

32
33 Steven Robins,
34 It's 14.5%.

35
36 Francoise Carrier,
37 Well, 14.5 is not guaranteed, 14.5 was a maybe. Definitely 12.5 in stage one. If it goes
38 to stage two, that percentage might increase to 14.5. But, you know, that.

39
40 Steven Robins,
41 That's right.

42
43 Francoise Carrier,
44 That may depend on the ultimate yield, the full development may not have 1,550 units.



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1
2 Steven Robins,
3 Right.

4
5 Francoise Carrier,
6 They lost a lot of height in negotiations with the community members. They may end up
7 reducing the number of units and if they do that, they may not go to 14.5% on the
8 MPDU's. So, it is hard to say precisely how many MPDU's would be created.

9
10 Councilmember Leventhal,
11 Okay.

12
13 Francoise Carrier,
14 Forgive me for standing. I have some problems with my back in these chairs.

15
16 Councilmember Leventhal,
17 Well, okay, so it is close, 1550, 12.5% of that 193, 194 units and you're saying there's
18 219 people now, that's way less than 219 units.

19
20 Francoise Carrier,
21 It may be less than 219 units. We don't know.

22
23 Councilmember Leventhal,
24 It might be 120 units, something like that.

25
26 Steven Robins,
27 By the way, the 12.5% is only, I know this gets complicated, but the 12.5% only relates
28 to stage one. When you roll over into stage two that number goes up.

29
30 Councilmember Leventhal,
31 Right. Okay, but my point.

32
33 Steven Robins,
34 It would be a sliding scale.

35
36 Councilmember Leventhal,
37 I am trying to keep this short.

38
39 Council President Knapp,
40 That's fine.

41
42 Councilmember Leventhal,
43 The thrust of my question is, does it appear that there is a net loss of affordable units?
44 The answer to my questions appears to be, no it appears there is not a net loss of



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1 affordable units. I understand that you are taking an existing, you know, multifamily
2 housing, which is relatively low density, which the owner has decided to sell,
3 redeveloping it, and the question is, in the long run are we losing affordable units or are
4 we gaining affordable units and it sounds like it is about a wash.

5
6 Steven Robins,
7 It is hard to tell. Depending upon the sliding scale. But, there are a maximum on this
8 plan of I think – .

9
10 Councilmember Leventhal,
11 I would be happy, if Ms. Vergagni wants to comment, I'd be happy to hear from her.
12 Yeah.

13
14 Vicki Vergagni,
15 Just a couple of comments. Having lived across the street for almost 30 years, this is
16 similar to the situation out, if you cut down trees before, so that you do not have the
17 laws applied to you, well, this was something that was done at the property. A lot of
18 trees were decimated on part of the land so that.

19
20 Councilmember Leventhal,
21 The question is about affordable housing.

22
23 Vicki Vergagni,
24 Then the same thing, these places have not been rented for years. We've been seeing,
25 although people come looking for housing, I send them over there.

26
27 Steven Robins,
28 That's outside.

29
30 Francoise Carrier,
31 Sorry, we are going outside the record.

32
33 Councilmember Leventhal,
34 Right. My question is, do we believe we are going to have a net loss of affordable --.

35
36 Vicki Vergagni,
37 Yes.

38
39 Steven Robins,
40 There may be.

41
42 Councilmember Leventhal,
43 Why? We believe that. Let's stick to the question.



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1 Steven Robins,
2 They're not --.

3
4 Councilmember Leventhal,
5 I'm asking Ms. Vergagni.

6
7 Steven Robins,
8 Oh, I'm sorry.

9
10 Vicki Vergagni,
11 Yes.

12
13 Councilmember Leventhal,
14 Why do you believe there will be a net loss of affordable housing?

15
16 Vicki Vergagni,
17 Because, over the years, the number of housing units that have been available and
18 affordable have dramatically decreased. There used to be an awful lot more, and I fear
19 that this has been done intentionally.

20
21 Councilmember Leventhal,
22 I would suspect it was done intentionally. If the owner intended to sell and demolish and
23 have the new owner demolish the properties, then he would let the property go vacant.

24
25 Vicki Vergagni,
26 And it is my understanding that there are going to be fewer, based on the numbers
27 here, that there are going to be fewer available in the future based on the developer's
28 plan than are currently available.

29
30 Councilmember Leventhal,
31 Okay. You state in your testimony in the record that there are 352 units of affordable
32 housing, but the number 219 people has been cited somewhere. I don't know where
33 that is in the record.

34
35 Vicki Vergagni,
36 I don't know where that came from either.

37
38 Francoise Carrier,
39 That came from one of Ms. Vergagni's written submissions or her testimony. [multiple
40 speakers]. Did you say units?

41
42 Vicki Vergagni,
43 Units, not people.



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1 Francoise Carrier,
2 Because I wrote it down as people.

3
4 Vicki Vergagni,
5 I think it was units.

6
7 Francoise Carrier,
8 I don't have, it would take a while to go through the transcript and find it.

9
10 Vicki Vergagni,
11 Two hundred nineteen occupied, yes, exactly.

12
13 Councilmember Leventhal,
14 Well, okay, this is a very important question. But, you know, the option is not now before
15 us to have some other affordable housing developer come and rebuild the units, the
16 buildings as they are. I mean, the purchaser has applied to purchase the units and
17 that's the application before us and that's all we have before us. So, the question is, do
18 we rule yes or no on this application or remand the application? And so, I am not
19 hearing that it is plainly and clearly a loss, net loss of affordable units. I mean, if you can
20 make that case, do it with evidence but we've got all we can get on that. So, now let me
21 ask about transit oriented development and smart growth. Ann Ambler, I read what
22 you've got in the record. Okay. There is no one, all of us here would love to see a transit
23 way, bus way on Georgia Avenue from Olney to Silver Spring. It would be terrific. It
24 would be great. It would cost four or five billion dollars maybe, I don't know, three billion.
25 I don't know, how much would it cost? One billion? How much would it cost? I mean, do
26 we know how much it would cost? It's not in.

27
28 Francoise Carrier,
29 That would be totally outside the record.

30 Councilmember Leventhal,
31 It would be outside the record.

32 But, what is in the record is that Ann Ambler says, Ann Ambler is stated here as saying
33 she provides modified support for the project. She says she only supports the project
34 under the binding element that it doesn't get constructed until the Georgia Avenue bus
35 way is up and running. I would not call that really support. I would love to see the
36 Georgia Avenue bus way up and running. I wish we had.

37
38 Ann Ambler,
39 Up and running.

40
41 Councilmember Leventhal,
42 Well, tell me. I'm asking. What I want to know Ann, seriously, what I want to know is, as
43 someone who I truly believe is an advocate for transit oriented development and smart
44 growth, what are the conditions under which you would support density at Glenmont



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1 Metro? And if that's outside the record, I'm sorry, but you state certain conditions as
2 binding elements, a number of which, but certainly the first one of which, strikes me as,
3 you know, not happening in this decade anyway. I mean, I wish we had a Georgia
4 Avenue transit way. I'm all for it. If I could raise my hand and build it tomorrow, I would
5 raise my hand and do it. But it takes resources, it takes right of way, it takes master
6 planning, it takes, you know, there's years and years before we get there. And so, I
7 guess the question is, are there really any circumstances that are foreseeable in the
8 near term under which you would support this transit oriented development? Other than,
9 if you stick to saying that, you know, only if there is a Georgia Avenue transit way up
10 and running, then that's your position, that's alright, that's your position. Go ahead.
11 Yeah, that's a question to you.

12
13 Ann Ambler,

14 Okay. If one were to paint stripes on the one lane going southbound in the northbound
15 lanes and the reverse, you could get a bus way on the existing right of way. You would
16 not need to purchase any additional right of way. Then you run the return bus at the off-
17 hour, you run it with the traffic. You run it the reverse way, you run, you get the idea.

18
19 Councilmember Leventhal,

20 Well, okay, I appreciate that assertion. I think some transportation planners need to get
21 involved in that.

22
23 Ann Ambler,

24 Well anyway.

25
26 Councilmember Leventhal,

27 Because my understanding was that you, my understanding was that the Georgia
28 Avenue bus way was to run in the median.

29
30 Ann Ambler,

31 Yeah.

32
33 Councilmember Leventhal,

34 And it would not take away lanes of automobile traffic.

35
36 Ann Ambler,

37 The median would not require any additional right of way purchase either.

38
39 Councilmember Leventhal,

40 But you have to reconvert it, I mean, it's a million miles per road, it's a million dollars per
41 road mile. I mean, it's not something we can just snap our fingers and do.

42
43 Francoise Carrier,

44 And we are way outside the record. I would have to advise the Council not.



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1
2 Councilmember Leventhal,
3 Record states, okay.

4
5 Francoise Carrier,
6 To rely in making a decision on a discussion.

7
8 Councilmember Leventhal,
9 Okay.

10
11 Francoise Carrier,
12 Of the likelihood of the Georgia Avenue bus way going forward or how much it would
13 cost.

14
15 Councilmember Leventhal,
16 Alright. Let me go back to the record. Okay. The record states that Ms. Ambler, who is
17 an advocate for reducing the threat of climate change, would support this project under
18 the condition that the Georgia Avenue transit way were constructed, that is what it says
19 here.

20
21 Francoise Carrier,
22 Okay.

23
24 Councilmember Leventhal,
25 That doesn't strike me as support for the project that is now pending before us since the
26 Georgia Avenue transit way is not around the corner. I wish it were. Believe me, I'm not.

27
28 Ann Ambler,
29 Well, how is it that every other jurisdiction seems to be able to build streetcars and all
30 sorts of things.

31
32 Councilmember Leventhal,
33 Yeah. Well, that is outside the record, too. Okay, so, my question to you is, is that the
34 only, when you testified before us on the record and within the record, you said that you
35 believe that widening intersections and providing turn lanes are car oriented
36 improvements.

37
38 Ann Ambler,
39 Yes.

40
41 Councilmember Leventhal,
42 And you think we should go to transit oriented improvements.

43
44 Ann Ambler,



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1 Yes.

2

3 Councilmember Leventhal,

4 Are there other incentives to use the great big transit system that is right there, WMATA,
5 Metro, that would enable you to support this project or is only the construction of a
6 whole brand new gigantic infrastructure project that would enable you to support this?

7

8 Ann Ambler,

9 The bus way that I described on the cheap is not exactly a whole structure. But, in all
10 events, I have to remind you that the Metro rail goes only south and the buses that
11 serve that Glenmont Station, and there are about 12 lines, bring in a lot of people, but
12 they don't necessarily take people out to jobs because they follow circuitous routes and
13 they are very slow, they're caught in traffic. So, it is not the kind of a transportation hub
14 that you would find, for instance, in the Boston corridor where you have the Metro rail
15 going both ways and stations fairly close together. And it has become a wonderful
16 transit area.

17

18 Councilmember Leventhal,

19 Right. Well, this is outside the record, too, but I think I recall you testifying in support of
20 increased density at Shady Grove which is the other terminus, but that's also outside
21 the record. Mr. Ross, why do you believe this does represent transit oriented
22 development and smart growth?

23

24 Ben Ross,

25 This project is right across the street from the Metro. It is predominantly residential with
26 retail mixed in. It will provide a lively streetscape that will make the residential more
27 attractive. And the reality is that housing right next to the Metro has an overwhelmingly
28 high share of Metro use. In, the BRAC studies counted people going in and out of the
29 Metro Station.

30

31 Francoise Carrier,

32 This is way out of the record, too.

33

34 Ben Ross,

35 Yeah, but.

36

37 Francoise Carrier,

38 We know that the.

39

40 Councilmember Leventhal,

41 Well, then let's stay to the record.

42

43 Francoise Carrier,

44 We know that 12,000 people.



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1
2 Ben Ross,

3 But my testimony, to stay with what I said, that the County, the rules that the County has
4 adopted represent a compromise somewhere in between my point of view and let's say,
5 Tom -- point of view.

6
7 Councilmember Leventhal,
8 Alright. Look, Ben, let me just --.

9
10 Ben Ross,
11 And they followed the rules.

12
13 Councilmember Leventhal,
14 I want to move towards wrapping up. But, are you concerned by the amount of parking
15 provided here? Because, I'm going to make this observation. Before I was elected to the
16 Council, this outside the record, okay, but, if you live close to Metro, you may ride Metro
17 for your daily commute during rush hour, but you may still want to own a car. You may
18 still want to, you know, drive to Gettysburg on the weekend or, you know, so, the fact
19 that there is a parking space for a homeowner does not mean that homeowner does not
20 use Metro.

21
22 Ben Ross,
23 That's right. This is on the record. We are concerned, the amount of parking that was
24 required is well above what this development will use, and, but it was required by the
25 Planning Board. In this case, we don't think that is a problem and in our testimony to the
26 Planning Board on this matter, which is on the record, isn't it?

27
28 Francoise Carrier,
29 No. Actually, nothing comes, only, testimony before the Planning Board would only
30 come to me if someone specifically gave it to me.

31
32 Councilmember Leventhal,
33 Alright. Okay. I've had my questions answered. Let me just make this observation about
34 the process. It seems kind of late to me, after the Council spent a whole year talking
35 about LATR and PAMR and the school tests and all of these things, for our good
36 friends, all of whom testified on these issues, to discover that LATR and Critical Lane
37 Volume are woefully out of touch with current technology and how come we are not
38 using computer modeling. I mean, we had a year to make those changes. Now we'll do
39 it again next year. But, you know, we just went through that. We just, we just, we just,
40 but you voted for it Mr. Elrich. I mean, we have LATR in place. It is part of the growth
41 policy. We have an opportunity to modernize it, to use more adept technology, to, you
42 know, use all kinds of alternative modeling. You all were the proponents of this new
43 growth policy. Why didn't you all propose that if there was a better model out there for
44 traffic modeling?



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1
2 Council President Knapp,
3 Mr. Leventhal has the floor. It is a rhetorical question.

4
5 Councilmember Leventhal,
6 If there were a better.

7
8 Council President Knapp,
9 [laughter]. Well, it is while he's got the floor.

10
11 Councilmember Leventhal,
12 Well, the criticism is, is that the procedure that exists now is out of touch, out of date,
13 doesn't really reflect the problem and therefore, we should remand because the
14 procedure that the applicant relied upon is not workable. But, we had a year to make the
15 changes. Now, we'll do it again next year. Maybe we can bring it into date and use a
16 more up to date model and better technology and our friends from the University of
17 Maryland. I mean, we had a year to do that.

18
19 Council President Knapp,
20 Okay. That spurred a few more comments as one might imagine. I appreciate, this
21 obviously is a complex issue and I think every Councilmember has had an opportunity
22 to, Ms. Ervin and Ms. Trachtenberg have not spoken. I just want to make sure that they
23 don't want to speak before we get too far.

24
25 Councilmember Trachtenberg,
26 Actually, I do have one question.

27
28 Council President Knapp,
29 Well, we've gone this far. We may as well, if you have a question, you may as well ask
30 it.

31
32 Councilmember Trachtenberg,
33 I was waiting. Actually, it's for Francoise. If this is remanded, what is the timetable with
34 that? How quickly does that actually come to a discussion on your end?

35
36 Francoise Carrier,
37 Well, I mean, I can schedule a session, I would call it a pre-hearing conference, you
38 know, sometime within a few weeks of when the Council makes a decision.

39
40 Councilmember Trachtenberg,
41 Uh huh.

42
43 Francoise Carrier,



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1 The larger question is how much time the applicant would need to produce whatever
2 additional evidence they are going to produce. And I guess I would ask them that
3 question at that session.

4
5 Councilmember Trachtenberg,
6 Okay.

7
8 Francoise Carrier,
9 My guess is it would be on the order of, I don't know, a month or something. Maybe
10 more? I don't know.

11
12 Councilmember Trachtenberg,
13 Okay.

14
15 Francoise Carrier,
16 And then I would, that would have to go to the technical staff.

17
18 Councilmember Trachtenberg,
19 Right.

20
21 Francoise Carrier,
22 I would certainly want their input on it. I would leave it to the, unless the Council directs
23 me to make sure the Planning Board reviews it again, I would leave it to the discretion
24 of the staff whether to send it to the Board.

25
26 Councilmember Trachtenberg,
27 Okay. Thank you.

28
29 Council President Knapp,
30 I guess my observation is, I actually, I appreciate the Hearing Examiner bringing this to
31 our attention because I think what it does is it calls up, actually a lot of the points we
32 discussed are in the growth policy, which is the concept of what works versus what we
33 do. And you, and that puts you in an interesting place because ,presumably, people
34 look to government to establish policies, standards, consistency so people know by
35 which the rules are that exist that they're planning to gain. And I think that's important.
36 The problem you then run into is exactly what the Hearing Examiner has run into is,
37 there are times when that doesn't necessarily get you to the answer that works. And the
38 question becomes, do you have an opportunity to then kind of change the rules
39 midstream. And to some extent, going back to the questioning that Ms. Floreen had, it's
40 almost kind of the definition of pornography. I kind of know it when I see it is kind of
41 what I heard you saying is, that's going to be the right answer ultimately. There is no
42 standard, I'm going to know it is better because it appears to be better. And you will see
43 that it works. And I guess that's the biggest problem I have with all of this process is, not
44 that there is not an issue, not that there is not something that we need to try to address.



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1 The question is, do we play by the rules that exist, that are in front of us today? Do you
2 defer action for some period of time to go back and readdress some modification to
3 those rules because we find they are not sufficient, or do we approve what is in front of
4 us and then go back, recognizing what the Hearing Examiner has brought before us,
5 and say wow, that it is a real issue, and find the right vehicle in which we can go back
6 and make the appropriate policy modifications to then give the necessary flexibility to do
7 something that works, not just something that is a consistent policy. And I think those
8 are the pieces that we have in front of us. And so, I struggle, I have difficulty thinking I
9 would support the remand just because it seems to me that is a change of the rules
10 midstream. I am supportive of, if in working with Mr. Zyontz and our staff, coming up
11 with a better way to address something that's broken when we see it, but a way that lets
12 people know that we have the ability to do that and then, what are the pieces that we
13 have in place to look at. What are the tools it will take into account, not just saying, lots
14 of people do things differently and therefore one of those things out there in the world
15 we can employ. And I think that, I struggle with that. And so, given the motion that we
16 have in front of us, which I believe is Ms. Praisner's motion with a modification added,
17 an amendment added by Mr. Elrich, I struggle with being able to support that because it
18 seems to me that we go against actually establishing the right level of consistency and
19 standards. But I think it does point to an issue that we are going to have to come back
20 and address as a Council, which is, when we see something that's not working, even
21 though it is our policy, how do we come up with a way to address that going forward?
22 With that, we have, they keep changing, Ms. Praisner, followed by Mr. Berliner, followed
23 by Mr. Elrich, at which point I would like to then call the questions.

24
25 Councilmember Praisner,

26 I just want to make three or four very brief comments. We have been told today that this
27 is not a precedent, that the County Councils have in the past, not accepted the
28 information in front of us and have asked for additional information, have remanded
29 and/or rejected the proposal in front of us. We were told today that that occurred with a
30 rezoning by Mr. Grossman in recent times. So this is not ancient history. Number two,
31 we have also been told there are no traffic rules at this point, that there is guidance from
32 the Planning Board but not Council directive and rules. We have also seen, in my view,
33 clear evidence that we have a rationale for remand, based on the information presented
34 to us today about the traffic flows and the queuing process, which is not adequately
35 reflected. We have also, during the growth policy, since this has been mentioned, had
36 significant discussion about the inadequacy of LATR and that is on the work plan
37 associated with this Council and with working with the Planning Board. And an
38 unhappiness and inadequacy of what the Planning Board has done. So, we have no
39 precedent that requires us to rubber stamp what is before us rather than to suggest a
40 remand with better data. We have an institutional concern about LATR and requiring
41 additional work within the work plan. Each case stands on its own. And, except for a
42 new interpretation that we are going to count affordable housing based on whether
43 somebody is living in it at the time, as opposed to what the rental price or sale price may
44 be, we have, I think, seen adequate evidence that the concerns of the community on



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1 compatibility, on height, and on the queuing issues, the queuing issues being the most
2 dramatic, require further work. I think the Hearing Examiner has done us great service.
3 She has also identified queuing as an issue within her remand Resolution. So, that is
4 why, I think Councilmember Elrich's comments are basically consistent with what the
5 Hearing Examiner has already said. And I would urge my colleagues when they think
6 about, not only this, but future rezonings, that you want latitude, not a straightjacket.

7
8 Council President Knapp,
9 Councilmember Berliner.

10
11 Councilmember Berliner,
12 Thank you, Council President. For me, the telling exchange was with the Hearing
13 Examiner when I articulated what would be my standard, if you will. And let me read to
14 you what my standard would be which is that CLV's are the standard except where as
15 demonstrated by a preponderance of evidence that application of CLV's alone is
16 inadequate to prevent adverse traffic impacts. I believe that what you said to us is that
17 you have made such a finding.

18
19 Francoise Carrier,
20 Correct.

21
22 Councilmember Berliner,
23 And if I am correct, that preventing adverse traffic impacts is our charge, you have
24 found that that mechanism which we typically employ in this instance does not achieve
25 that result.

26
27 Francoise Carrier,
28 That was my conclusion.

29
30 Councilmember Berliner,
31 If that is your conclusion, I am supportive of the remand. Thank you.

32
33 Council President Knapp,
34 Councilmember Elrich?

35
36 Councilmember Berliner,
37 Let me just, if I could reclaim the floor for a moment. Just for a quick moment. Because,
38 for me, this is not about whether this is a good project or not. This has nothing to do
39 about whether or not this project is appropriate, will achieve many of the smart growth
40 objectives that we seek. It is solely a question of whether or not the mitigation that has
41 been offered to date is sufficient. And, I have not heard any suggestion that these
42 people are going away. So, my belief is that in those circumstances it is appropriate to
43 remand to ensure that the mitigation that is provided is appropriate for this particular



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1 circumstance in which the Hearing Examiner has determined that the record says that
2 CLV's alone are insufficient.

3
4 Council President Knapp,
5 Okay. Councilmember Elrich.

6
7 Councilmember Elrich,
8 Roger, you said what I had wanted to say I think very well. The critical issue to me was
9 that her job is not to determine whether the CLV is an adequate test. Her job is to
10 determine what the impact is. And if you determine that the test doesn't adequately
11 show the impact, then it makes sense to say I need a better test to get a picture of what
12 the impacts are. So I will be supporting a remand. Okay.

13
14 Council President Knapp,
15 We still have two more lights. Councilmember Floreen and Councilmember Leventhal
16 gets the last word.

17
18 Councilmember Floreen,
19 A technical question, for queuing analysis, is it just measuring, as is shown, as in Mr.
20 Kauffunger's exhibit 121, this set of pictures, what the traffic is like today?

21
22 Francoise Carrier,
23 I'll tell you that the LATR guidelines say, they say, existing queues shall be measured
24 by the applicant and total traffic, existing, background, and site, which I take to mean
25 projected trips from the current, from the proposed project, and planned roadway and
26 circulation changes shall be taken into account. The average queue length in the
27 weekday peak hours shall not extend more than 80% of the distance to an adjacent
28 signalized intersection, provided the adjacent signalized intersections are greater than
29 300 feet apart. The 80% standard provides a margin of safety for peeking. If they're
30 closer than 300 feet, it becomes 90%.

31
32 Councilmember Floreen,
33 Yeah. Okay. You don't need to read the whole shebang.

34
35 Francoise Carrier,
36 Okay. Sorry.

37
38 Councilmember Floreen,
39 But, so, like LATR, or Critical Lane Volumes, then they have to assess what it would
40 look like, not today, but with everything.

41
42 Francoise Carrier,
43 Yes.



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1 Councilmember Floreen,
2 Everything that's been approved and within some kind of radius.

3
4 Francoise Carrier,
5 Yes.

6
7 Councilmember Floreen,
8 And whatever those projects have had to do to accommodate or to satisfy whatever
9 conditions have been applied to them.

10
11 Francoise Carrier,
12 Correct.

13
14 Councilmember Floreen,
15 So, I wanted to make the point that it's not a picture of today that is the standard for the
16 analysis, right?

17
18 Francoise Carrier,
19 Correct.

20
21 Councilmember Floreen,
22 It's what it would be based on running some kind of computer generated model?

23
24 Francoise Carrier,
25 I don't frankly know how they do it but.

26
27 Councilmember Floreen,
28 I guess, I don't know.

29
30 Francoise Carrier,
31 But presumably there is some kind of modeling going on.

32
33 Councilmember Floreen,
34 And is that like what they do with a CLV?

35
36 Francoise Carrier,
37 Like in what respect?

38
39 Councilmember Floreen,
40 Well, they run current and then project and other assumed development in analyzing
41 the, whether the numbers satisfy existing criteria.

42
43 Francoise Carrier,
44 It sounds to me like it is setting up exactly the same structure.



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Councilmember Floreen,
Same kind of analysis.

Francoise Carrier,
You assess the queues currently by getting real-time, actual data, and then you take the background traffic from previously approved projects, and someone has some intelligent way of projecting what that would do to the queues, and then you add the traffic from the proposed development, plus you have to factor in any kind of roadway improvements that have been approved or are required from other developers, and then you get the net result of what it would look like with everything in place.

Councilmember Floreen,
And so, then, as I said, the pictures and the experience that folks have to suffer with today, in this, this environment, is certainly of major concern, but it's not the, those are not the numbers that necessarily drive that analysis?

Francoise Carrier,
Correct.

Councilmember Floreen,
Is that right? Thanks.

Council President Knapp,
Councilmember Leventhal.

Councilmember Leventhal,
I'm sorry to take up the Council's time.

Council President Knapp,
Go ahead.

Councilmember Leventhal,
I just want to remind the Council that the applicant has made it very clear that if we remand this and if the Hearing Examiner is in the position of finding some brand new measurement, the applicant will use the alternative review procedure and that's what is going to occur. So, if we think that the outcome here is we're going to gain new insight into how better to measure queuing or Critical Lane Volume, I suspect that's not going to occur. So, what really is going to occur is the question is, is 1,500 units just too many units to put at Glenmont because it's going to come back to us and we're going to have to vote on the rezoning again and the applicant is going to utilize the alternative review procedure and fundamentally it is a question of, is this just too many units? Because it's still going to be a lot of cars on the road. And I acknowledge there's a lot of cars on the road and I'm as familiar with this intersection as anyone else is. So, really this is a vote



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1 on how much density do you think you can handle at this Metro Station and that speaks
2 to larger questions about how much density can you handle at Metro Stations. Because
3 smart growth is not going to be easy. I acknowledge Glenmont is a residential
4 neighborhood. So is White Flint. So is Bethesda. It is not a Central Business District, I
5 agree with that, but there are people who live in the Bethesda Central Business District
6 and they're opposed to higher density at Bethesda, witness the Woodmont debate that
7 Mr. Berliner has been deeply involved in. So, those who live near Metro will always
8 express concerns about transit oriented development and higher density at Metro. That
9 is the challenge of our long-term vision for changing our transportation structure,
10 changing our housing structure. And so, that's the big challenge. So, I will vote against
11 the motion. I will be in the minority, I will lose. It will be remanded to the Hearing
12 Examiner. The applicant will use the alternative review procedure. This matter will come
13 right back before the Council some months from now and fundamentally it's going to
14 come down to how much transit oriented development is too much and do we really
15 want to concentrate density at Metro or not, acknowledging that politically it's costly
16 because the neighbors who live nearby don't like it. And that's a fact and that's never
17 going to change.

18
19 Council President Knapp,
20 Okay.

21
22 Steven Robins,
23 Mr. Knapp.

24
25 Council President Knapp,
26 No.

27
28 Steven Robins,
29 No?

30
31 Council President Knapp,
32 No.

33
34 Steven Robins,
35 But, the fundamental question was not answered.

36
37 Council President Knapp,
38 So what we have before us is the motion to remand made by Councilmember Praisner,
39 seconded by Councilmember Elrich, with a modification to use queuing analysis as
40 outlined by the Hearing Examiner. The Hearing Examiner has identified that there are
41 modifications that need to be made to the Resolution. And so, what I would turn to staff
42 to check on, is do we need to actually just take a straw vote for the changes to be made
43 to the Resolution and come back and let's take final action next time?
44



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1 Jeff Zyontz,

2 You can make these types of minor amendments without coming back.

3
4 Council President Knapp,

5 Okay. [laughter].

6
7 Jeff Zyontz,

8 If you did something dramatically different, then you need a new Resolution in front of
9 you. So, you don't need one here if the motion passes.

10
11 Council President Knapp,

12 Okay, all Councilmembers? I see heads nodding up and down. We actually have two
13 votes because application number G-862 and G-863. It's five votes. It's a roll call.

14 Madam Clerk, if you would, call the roll.

15
16 Council Clerk,

17 Mr. Elrich.

18
19 Councilmember Elrich,

20 Remand.

21
22 Francoise Carrier,

23 If it gets funded.

24
25 Council President Knapp,

26 Oh, I'm sorry, a yes is in support of the remand.

27
28 Councilmember Elrich,

29 Yes.

30
31 Council Clerk,

32 Ms. Ervin.

33
34 Councilmember Ervin,

35 Yes.

36
37 Council Clerk,

38 Ms. Floreen.

39
40 Councilmember Floreen,

41 No.

42
43 Council Clerk,

44 Ms. Trachtenberg.



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1
2 Councilmember Trachtenberg,
3 Yes.
4
5 Council Clerk,
6 Mr. Leventhal.
7
8 Councilmember Leventhal,
9 No.
10
11 Council Clerk,
12 Ms. Praisner.
13
14 Councilmember Praisner,
15 Yes.
16
17 Council Clerk,
18 Mr. Berliner.
19
20 Councilmember Berliner,
21 Yes.
22
23 Council Clerk,
24 Mr. Andrews.
25
26 Councilmember Andrews,
27 Yes.
28
29 Council Clerk,
30 Mr. Knapp.
31
32 Council President Knapp,
33 No. It is approved 6-3 for action number one in G-862. It is remanded. G-863, Madame
34 Clerk, if you'd call the roll.
35
36 Council Clerk,
37 Mr. Elrich.
38
39 Councilmember Elrich,
40 Yes.
41
42 Council Clerk,
43 Ms. Ervin.
44



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1 Councilmember Ervin,
2 Yes.
3
4 Council Clerk,
5 Ms. Floreen.
6
7 Councilmember Floreen,
8 No.
9
10 Council Clerk,
11 Ms. Trachtenberg.
12
13 Councilmember Trachtenberg,
14 Yes.
15
16 Council Clerk,
17 Mr. Leventhal.
18
19 Councilmember Leventhal,
20 No.
21
22 Council Clerk,
23 Ms. Praisner.
24
25 Councilmember Praisner,
26 Yes.
27
28 Council Clerk,
29 Mr. Berliner.
30
31 Councilmember Berliner,
32 Yes.
33
34 Council Clerk,
35 Mr. Andrews.
36
37 Councilmember Andrews,
38 Yes.
39
40 Council Clerk,
41 Mr. Knapp.
42
43 Council President Knapp,



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1 No. And that is also approved 6-3, both G-862 and G-863 have been remanded to the
2 Hearing Examiner.

3
4 Francoise Carrier,
5 I believe the applicant's counsel is requesting clarification.

6
7 Council President Knapp,
8 Alright.

9
10 Steven Robins,
11 Thank you! [laughter]. Thank you. Mr. Knapp, the issue, one issue that was not
12 addressed, at least, I don't think it was addressed, related to the grade separated
13 interchange and how that plays into the evaluation of satisfying either the queuing
14 analysis or even the CLV analysis.

15
16 Francoise Carrier,
17 Does the Council wish to give direction as to whether that should be considered
18 regardless of whether it's funded or does the Council wish to leave it under the current,
19 as it currently stands?

20
21 Council President Knapp,
22 It was not, all of the lights are on, it's a Christmas tree.

23
24 Councilmember Berliner,
25 I would like to point out, I raised the question expressly and my understanding was the
26 grade separation issue is irrelevant to stage two because there's a binding commitment
27 not to move forward until, and such time as that exists, and so, it is only, the only issue
28 really is with respect to stage one.

29
30 Steven Robins,
31 Right. Okay, but the question is whether the grade separated interchange can be
32 considered for purposes of zoning as an, well, you're going past the scope of the LATR
33 guidelines and we've had a four hour discussion about whether you can go past the
34 scope and the LATR guidelines for subdivision review say that you cannot include an
35 interchange that is not fully funded within four years in the CIP or CTP, but it doesn't say
36 that for zoning.

37
38 Councilmember Praisner,
39 It does for the growth policy beyond the LATR. It says so in the Council policy overall,
40 that if it isn't funded within four years, it cannot be counted.

41
42 Steven Robins,
43 There are improvements that have been counted.



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1 Council President Knapp,
2 Okay.
3
4 Councilmember Praisner,
5 Under the current—.
6
7 Steven Robins,
8 But we're on the old growth policy.
9
10 Council President Knapp,
11 Ms. Floreen then Mr. Elrich.
12
13 Councilmember Floreen,
14 A stage one versus.
15
16 Council President Knapp,
17 Hit your, turn your microphone.
18
19 Councilmember Floreen,
20 Thanks. A stage one versus stage two point. Stage one is how many units? How much?
21
22 Steven Robins,
23 Five hundred new units.
24
25 Councilmember Floreen,
26 Five hundred.
27
28 Steven Robins,
29 Up to 500 new units.
30
31 Francoise Carrier,
32 Plus 275 replacement units?
33
34 Steven Robins,
35 Right.
36
37 Councilmember Floreen,
38 So, that's.
39
40 Steven Robins,
41 It would be a total on the property of eight, at full build out, 852 units.
42
43 Councilmember Floreen,
44 At stage one?



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1
2 Steven Robins,
3 Yeah, 77 would remain, 275.

4
5 Councilmember Floreen,
6 Okay, but that's.

7
8 Steven Robins,
9 Replacement and then 500 new.

10
11 Councilmember Floreen,
12 So, it's 500 new units. So, just to be clear, if the interchange, intersection issue is a
13 condition for stage two to be able to proceed. Is that correct?

14
15 Francoise Carrier,
16 No, partially correct. The binding element says that stage two cannot proceed until
17 either the grade funded interchange, the grade separated interchange, is fully funded for
18 construction or other improvements, which may be roadway improvements, transit
19 improvements, there's a long list, that the Planning Board thinks would make the
20 intersection function at an acceptable level are under construction.

21
22 Councilmember Floreen,
23 So, for the purposes of what's been agreed to for the remand, I assume this goes to the
24 stage one issue alone?

25
26 Francoise Carrier,
27 It does as a threshold matter, yes. I mean, if I don't find that they have demonstrated
28 compatibility with – for stage one, then they're obviously not going to demonstrate it for
29 stage two.

30
31 Councilmember Floreen,
32 But is, would the test be applied to both stages for the purposes of the remand?

33
34 Francoise Carrier,
35 Yes, yes, and I think the applicant would like to be able to.

36
37 Councilmember Floreen,
38 Okay.

39
40 Francoise Carrier,
41 Is seeking, trying to find out whether the Council would like me to move away from the
42 standard in the LATR guidelines that says you can't count it if it's not fully funded and
43 it's going to be publicly funded. And it was discussed.



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1 Steven Robins,
2 That's a subdivision standard.

3
4 Francoise Carrier,
5 It is a subdivision standard but it.

6
7 Council President Knapp,
8 Restate what you would, how you would assess the grade separated interchange for
9 your analysis.

10
11 Francoise Carrier,
12 Currently, I am not placing any reliance on the grade separated interchange to
13 demonstrate traffic compatibility, because under the policy established in the LATR
14 guidelines, something that is not fully funded for construction within four years should
15 not be relied upon. Moreover, there is no evidence in my record to actually say what the
16 grade separated interchange would do. I believe the applicant would like the opportunity
17 to present evidence about what it would do and to try and persuade me that it should be
18 considered an improvement that is reasonably probable of fruition in the foreseeable
19 future, moving away from what the LATR guidelines say. And I don't know how I would
20 come out on that, I'm sorry. I would have to review the case law to see how, where the
21 decisions fall on what's reasonably foreseeable and what isn't. I think that's a, there's a
22 fair amount of subjectivity in that. So, unfortunately I can't prejudge that. I didn't think
23 about it because I just, I followed what the LATR guidelines said.

24
25 Council President Knapp,
26 So we had the motion before us, we had a motion that was just approved, the makers of
27 the motion, the approvers of the motion, is what the Hearing Examiner just indicated
28 consistent with what you believe you just voted on?

29
30 Councilmember Berliner,
31 Let me, if I could, Council President, I appreciate, it's been a long day for all of us.

32
33 Council President Knapp,
34 Getting longer.

35
36 Councilmember Berliner,
37 It's getting longer. And I could be missing something here. It's been a long day. Insofar
38 as the project sponsors have said, we are not going forward with stage two unless this
39 other project is built or there is equivalent roadways, et cetera in place and a finding
40 made to that effect. I don't get why you're even looking at stage two.

41
42 Francoise Carrier,
43 Because I don't believe that the Council is permitted to delegate to the Planning Board
44 its authority to make a finding regarding compatibility of stage two. And that is



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1 essentially what that would do. To say that the binding element means that you don't
2 need to make a finding about traffic compatibility at the zoning stage would be
3 delegating the Council's authority completely to the Planning Board on that point, and I
4 don't believe the Council is in a position to do that.

5
6 Councilmember Berliner,

7 But what you're basically saying is you're going to judge both stage one and stage two
8 by a standard that is really irrelevant to stage two if, in fact, they have said we're not
9 going forward with stage two unless we have this. So you are, here's, that's where I get
10 cross threaded. I get it for stage one, I get where we say CLV's don't work for stage one
11 and that we need to get more evidence. I don't get how that same analysis is applicable
12 to stage two when they said there's an entirely different threshold as to whether we're
13 going forward and it's a binding element.

14
15 Francoise Carrier,

16 But let me put.

17
18 Councilmember Berliner,

19 Of whether they go forward.

20
21 Francoise Carrier,

22 Let me put it this way, if the Planning Board's recommendation were in fact a decision,
23 they would have granted the rezoning, because in their view the test had been met.

24
25 Council President Knapp,

26 Crystal ball.

27
28 Francoise Carrier,

29 The CLV, the LATR requirements had been met and therefore they would have
30 approved the rezoning. They made a judgment on basic, well, not exactly the same
31 evidence I had, because I had a four-day hearing and they didn't have the benefit of all
32 that evidence, but based on the same traffic study and the same proposed plan, they
33 came out to a different decision. I therefore, do not assume that the decision they would
34 make as to what traffic improvements would make that intersection operate acceptably
35 is the same decision that I would make based on the same evidence or that the Council
36 would make. So, I believe it's my responsibility to place the Council in a position of
37 making the decision based on the evidence of record as to both stages of the proposed
38 development. In my view, the binding element, the purpose of the binding element is to
39 ensure that the phasing recommended in the sector plan would be satisfied. It is a
40 phasing element, it is not an element that demonstrates traffic compatibility.

41
42 Council President Knapp,

43 Okay. Mr. Elrich, last comment?



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1 Councilmember Elrich,
2 Never mind. [laughter].

3
4 Council President Knapp,
5 Okay.

6
7 Francoise Carrier,
8 So, where does that leave me with the grade separated interchange?

9
10 Council President Knapp,
11 What you just stated to us about three minutes ago, as to how you would take that into
12 assessment.

13
14 Unidentified
15 You can consider it.

16
17 Francoise Carrier,
18 Which means that I don't, I'm not going to be bound by the LATR guidelines, statement
19 in that regard.

20
21 Council President Knapp,
22 Right. Correct.

23
24 Francoise Carrier,
25 Okay.

26
27 Council President Knapp,
28 Is that clear to everyone?

29
30 Francoise Carrier,
31 Yes.

32
33 Council President Knapp,
34 I see heads nodding upside, up and down, okay. Everyone out there? Good. Okay. We
35 are in recess until 7:30.

36
37 Steve Robins,
38 Thank you for your patience. Come back here.

39
40 Council President Knapp,
41 Come back here.

42
43 Councilmember Praisner,
44 Yes, up on the 7th floor.



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1
2 Council President Knapp,
3 The hearing is, yes, on the 7th floor. Okay, thank you all very much and thank you all for
4 those of you who participated.
5
6 Francoise Carrier,
7 How about the rest of the month?
8
9